

that care is provided to these vulnerable residents by an adequate staff that is well trained.

When we talk about ending Federal mandates, it is often because an industry or some other interest group has asked for the repeal of a particular law or regulation. The irony of this instance, Mr. President, is that no one outside of the Congress has asked that we repeal the nursing home reform law. Not only was this law accompanied by unprecedented consensus when it was first enacted, it still enjoys the support of the industry being regulated. Mr. President, if anyone were clamoring to repeal this law, we would expect it to be the nursing home industry. But just last Saturday, in the New York Times, the executive vice president of the American Health Care Association, Mr. Paul Willging, said—and I quote—"We never took a position that the 1987 law should be repealed." The New York Times reporter was unable to find anyone representing the industry who would say they wanted the law repealed.

Mr. President, I would like to point out that not only were these standards enacted with broad bipartisan consensus, there is scientific evidence that they are working. These standards are improving care. They are making life better for those among us who live in nursing homes.

Last Saturday, a Republican spokesman for the House Commerce Committee was quoted in the Washington Post as saying that the proposal to strip away the safety standards is "ending an 8-year experiment." He went on to say—and here again I am quoting—that the standards are "confining, expensive, and counterproductive."

Mr. President, the data we have so far lays waste to those unfounded assertions. Last Friday, at a hearing on the Medicaid Program, we were presented with the results of a scientific study by the independent, well-respected Research Triangle Institute. Rather than being confining, expensive, and counterproductive, as the Commerce Committee staffer claimed, this research indicates that the standards are liberating, cost-effective, and result in improved outcomes.

I say liberating because the standards have decreased the unnecessary use of physical and chemical restraints in nursing homes. According to the Research Triangle Institute, since the nursing home reform standards were implemented in 1990, the use of restraints has dropped by 50 percent. And the Republicans claim that the standards are confining? It does not sound to me like they have been confining for nursing home patients.

And lest you think that unrestrained patients are more difficult to care for, let me get to the second point—the standards are cost-effective. This study indicated that less staff time is needed to care for patients who are unrestrained. In addition, because patients

are receiving better care and staying relatively healthier, they are being hospitalized less often. According to RTI, nursing home patients are suffering from fewer injuries and conditions caused by poor care—this translates to a 25-percent decrease in hospital days—resulting in a \$2 billion per year savings in Medicare and Medicaid combined. So how can it be said that these standards are expensive?

The RTI study also points to improved patient outcomes—and I know of no better measure of nursing home productivity. There has been a 50-percent reduction in dehydration, a 4-percent reduction in the number of patients developing nutrition problems, and we see 30,000 fewer patients suffering from bedsores. We are also seeing significant declines in the use of indwelling urinary catheters, a reduction in the use of physical restraints, and far fewer patients who are not involved in activities. This contributes greatly to quality of life. The RTI data also show that since nursing home reform was implemented, patients are suffering less decline in functional and cognitive status. So I ask my colleagues on the other side of the aisle, how can it be said that these standards are counterproductive?

Mr. President, I pointed out earlier that the nursing home industry has not asked for a repeal of these standards. The industry is concerned, however, about the depth of the cuts being considered with respect to the Medicaid Program. Although nursing homes support the quality standards, they are understandably concerned about their ability to maintain these standards in the face of deep cuts in funding. This is a serious issue which we must address, Mr. President. But when we address these concerns about funding, we should start with the assumption that standards must be maintained. We should start with the assumption that we will not repeal a law which no one has asked us to repeal. Instead, what I fear my colleagues on the other side of the aisle would rather do is throw standards out the window, cut the funding indiscriminately, and then hope for the best. Mr. President, I am not willing to take such a chance with our frail elderly. I hope my colleagues in the Senate will join their voices with mine in this call to protect our vulnerable nursing home residents.

Mr. President, I would like to close by saying, during this debate on reconciliation, in which there will be very little time, we are going to look at this particular issue and a lot of other issues that relate to it. We are going to look at the need to continue, for example, the reimbursement, the rebate for the States that have Medicaid prescription drug programs. This is something the drug industry is fighting, but it is something we have to maintain so the States can get the best possible price for the drugs that they provide for poorest of the poor population.

There are going to be many other areas that we are going to look at. But

we thought today would be a good day to start the debate on reconciliation, because we know the time will be short once that debate is actually, technically and literally begun.

Mr. President, I again thank my good friend from North Carolina who has been most cooperative.

I yield the floor.

CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY [LIBERTAD] ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. HELMS. Mr. President, I believe the distinguished Senator from Georgia is seeking recognition.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, I come to the floor in support of the measure which is before the Senate, somewhat different than the previous speakers we have heard, to rise on behalf of the Cuban Liberty and Democratic Solidarity Act, otherwise called Libertad.

I hope the good chairman of the Foreign Relations Committee will let me embrace an issue of international consequence, as a prelude to my comments here.

A distinguished Member of this body, my good colleague from Georgia, Senator NUNN, as everybody knows now, has announced that he will depart the Senate after the conclusion of his term. Of course, this has an enormous impact in our home State of Georgia and the Nation as well. I told the Senator when we visited just before his announcement that he left a very rich legacy for himself, for his family, for our State, and for the Nation. We are all indebted to the service of the distinguished senior Senator from Georgia. It has been long, it has been arduous, statesmanlike, and it has been civil. And the Senator from Georgia has made a significant contribution to his era in the history of the U.S. Senate and our country.

I first met the Senator from Georgia when he was in the House of Representatives and just before I became a member of the Georgia Senate. And he was equally held in high regard in our home State as he was here on the national scene.

A lot of people have asked me what the effect would be of his departure. And I said, of course, there will be an interim effect, but I also pointed out that in our vast democracy filled with talent, capacity, one of the rich treasures of it which we have seen throughout our history is that we regroup and move on.

But another point I would like to make is the Senator in his closing statement in the House Chamber pointed out that he is not leaving public life, that he will continue to be an activist in public policy and a resource not only to us in the Senate but to the Nation as well.

So I wish the Senator every goodwill, and Godspeed to him and his family as they pursue a new adventure. He will be missed here. He will be appreciated. And as a fellow Georgian I think I speak for all of those in our State, we hold him in the highest regard and wish him the very best in his future.

Of course, the Senator from Georgia has been on the international scene for a long time. He has watched the effects in Cuba of an avowed enemy of the United States in one Fidel Castro. Fidel Castro has throughout his history been an arch enemy of the United States and its people. And to this day he has not disavowed any of his intentions nor his hostility to this country and its people. He has been the exporter of terrorism. He has been the exporter of revolution. He has been the exporter of turmoil. And its effect in our hemisphere has been significant, and its effect here in the United States has been significant.

There are those among us who think that this is the time to open relations with Cuba and that it will, through communication and interaction, cause Fidel Castro, this archenemy of the last three decades, to somehow soften his stance.

That reminds me of the Soviet policy. This Nation's capital was filled with Soviet apologists who felt that the definition of the Soviet Union as an "evil empire"—like former President Reagan—was the inappropriate approach to dealing with the Soviets. He felt that power and the force of power was what it was going to take to cause the Soviet Union to implode, and he was correct. Many of these apologists have become awfully silent. But there can be no doubt that the firm, forceful, aggressive policy of the United States toward the avowed enemy, the Soviet Union, had an impact and effect.

Mr. President, no one is suggesting that Fidel Castro is near the national concern as the Soviet Union was, but certainly anything that is 90 miles off the coast of the United States that is an avowed enemy needs to be watched very, very closely.

And I think the Cuban apologists are wrong, too. I believe that the policies of the last 30 years by Republican and Democrat administrations—by the vast majority of the Congress to impose tough sanctions, embargoes, and to hold firm that we are going to keep the pressure on this government of Fidel Castro until there is liberty, until there is democracy, until there is freedom—are absolutely correct.

This legislation is nothing more than an extension of U.S. policy as it has been shaped in a bipartisan way, as I said, by Republican and Democrat administrations alike.

Mr. President, this is absolutely no time for us to rewrite that policy. We are succeeding. Now that the Soviet Union cannot spoon-feed Castro, the sanctions are imposed and they are feeling the pressure of this United States power, it should be continued. It

should not be modified. It should not be nullified. It should not be weakened. It should be toughened.

When you look at the nature of life in Cuba today, we still have a litany of human rights violations, personal rights and freedoms being trampled on. This is not a leader with which the United States should put its credibility on the line, nor ratify and certify, nor give strength by the suggestions that we should begin negotiating in good faith with a man who has such a history of totalitarian oppression.

Mr. President, one of the provisions which is somewhat controversial, but I think one of the more important pieces of debate with regard to the legislation, is title III, which has two parts. It denies entry into the United States to anyone who confiscates property or traffics in confiscated property; and, No. 2, it gives the U.S. citizens valid property claims and a private right of action in Federal court.

I have been very concerned about property rights of U.S. citizens in foreign countries in our hemisphere for some period of time. Cuba is not the only country with which we have difficulties in regard to the interests of United States property owners in other countries. It has been at the center of a long debate—I see my colleague from Connecticut—with regard to Nicaragua and other countries. And considerable progress has been made in the aftermath of President Chamorro's new democracy for about a year. We were thrashing through this issue, and over and over making the point that U.S. citizens who own property there needed appropriate dispensation of that property. I think that discussion bore fruit, and many of those properties are now being settled. And I give much credit to the Chamorro government for the good faith in which they came to the table and tried to deal with those legitimate property rights. I think that will no longer be an issue in the not-too-distant future.

In the case of Cuba, however, we have 5,911 American property claims valued at \$1.8 billion in 1960 value. This is an enormous issue. No one denies the confiscation. The Cuban Government has shown absolutely zero respect for this property and has indicated no intention of addressing the issue. And, to complicate it even further, they are using the property to produce currency in their hard-pressed economy.

What this involves is taking the property that was lawfully owned by people who are now U.S. citizens, or were U.S. citizens at the time, confiscating the property and actually entering into a world market on the property. We have a situation now where citizens of other countries in our hemisphere are negotiating with the Cuban Government and purchasing these properties for which there are claims by U.S. citizens and selling them to foreign nationals of other countries.

Mr. DODD. Will my colleague yield on this point? I do not want to inter-

rupt his time, but it is an interesting conversation. I wonder if he might just yield.

Mr. COVERDELL. I will be glad to yield.

Mr. DODD. I am going to raise this in my own time. But my colleague brings up probably the most controversial part of the bill. He properly identified it as a controversial one. He is absolutely correct in identifying the number of certified U.S. claims as 5,911, that were the result of actions taken by the Castro government after 1959. Control of the country.

My concern here is not that issue at all. That is going to be difficult enough to deal with. Nonetheless, I feel confident we can ultimately address those claims. What I think we do here is add a new element to the problem which he has already alluded to, and that is what has heretofore been international and U.S. law with respect to the resolution of confiscation of property of a U.S. citizen. We are now going to expand the definition to include the property of Cuban nationals who left the country and became U.S. citizens subsequent to their property being taken.

We are talking about roughly a million people who have left Cuba. The estimates are that perhaps as many as hundreds of thousands of these individuals left behind property—no one suggests that everyone of the million people who left will have claims against Cuba, but several hundreds of thousands well may. So we add to the 5,911 claimants already certified, potentially, as many as 300,000 to 400,000 additional potential claims.

Those of us who are concerned about that provision naturally ask the question why we are prepared to provide special legal rights for this category of individuals. After all we have Polish-Americans, people who have left the former Soviet Union, people who fled China, as well as other countries of repression and left behind or had taken their property by former regimes. I think, any one of these groups can legitimately come forward and ask for similar treatment if we change the law.

There is a reason for current international law and practice in this area. Under existing law, the U.S. Government is responsible for espousing the claims of persons who were U.S. citizens at the time the confiscation occurred. For those individuals who were sovereign nationals of the country in question, the issue is with acts of their government. If we change domestic law in this one case, I think we can fully expect individuals who may have also lived under a Communist government to say why not us; we left; you have changed the law to for one group of people; we would like a similar application of the law in our case.

I just raise this with my colleague, and I am going to address it at greater length here, but it is one of the major concerns I have with this bill. I see it

subjecting our Federal court system to substantial increased costs in order to process these new claims. In addition I am concerned that these new claims will probably make it very difficult to resolve the 5,911 certified U.S. claimants who have a right under longstanding law to have their claims addressed. These claimants have expressed that very concern. There are some strong letters from them—worried about exactly what happens to them as a result of this explosion of claims that may come before the court as a result of this legislation.

I raise that just as an issue. I know my colleague has been involved with the issue of expropriation generically, as have others. Expropriations have occurred in many countries—Panama, El Salvador, Nicaragua, a whole host of countries.

With respect to the issue you raise about companies from other countries doing business in Cuba. By my count 58 countries have some form of business interest in Cuba today. Great Britain has a number of interests—France, Germany. It is not just Latin American countries. Some of the most conservative democratic countries in Europe have major economic enterprises there. And we will virtually be precluding entrance into this country citizens of our allies in Europe who may have business interests there. Do we really want to alienate our closest trading partners in this way? It seems to me that we may be raising a tremendously complicated problem for ourselves down the road. I raise that for my colleague's comments.

Mr. COVERDELL. I appreciate that. As the Senator noted, I singled this out as one of the more controversial provisions.

Mr. DODD. He is absolutely correct.

Mr. COVERDELL. And my colleague would also acknowledge that this issue does not confine itself to Cuba alone. In fact, one of the countries in which we both maintain a rather high interest is Nicaragua, and that very question is preeminent in the struggle to resolve property rights of individuals who were Nicaraguan citizens at the time, came to the United States, became U.S. citizens and are now claiming property rights in Nicaragua.

So my response to my colleague from Connecticut is I believe that it is time for this to be elevated in debate and search such as we are doing today and will continue through the process of dealing with this legislation.

Frankly, I believe we need to obtain the interest and attention of the countries that the Senator pointed to, and I might also point out they are on both sides of our northern and southern border, too, with Canada and Mexico dealing with properties that were, in the Senator's definition, without question property confiscated by the Castro government, acknowledged property owned by U.S. citizens at that time.

Those properties—forget for a moment the question the Senator raised

about expansion, which I think is a legitimate question. Those properties are being bartered by the government with full knowledge. We are not having a situation here where over the years the title is confused, a citizen acquired it or got it and somehow has sold it to a foreign national of another country. This is a program on the part of the Cuban Government to deal with its currency problems, which are immense. And I think the United States is morally required to confront that issue, I think not only with Cuba but we need to be making a statement, we need to be searching for resolution with our allies in terms of our respect for U.S.-owned property.

On a broader scale, I would say to the Senator from Connecticut, I think this is an issue that has not received enough attention, whether it is in Cuba or Nicaragua or some of the former Communist governments even in Europe. And I believe it is an issue of law.

I am not a lawyer, as is my distinguished colleague. But it is a question that requires more definition in this era of international history. We are talking about a period where we have an interdependent economy, far more open economy. We all acknowledge that. This question is basically in law 30 years or more old.

I think it deserves attention, and I am glad the Senator from North Carolina put it in the bill because I think it is going to force all of us to confront the issue more effectively than we have in the past. That would be my response to the Senator from Connecticut.

Just one more piece on that. The fact that the business interests in our immediate hemisphere, in our immediate sphere of influence, feel free enough to engage in transactions that affect these known properties, I think is very serious.

I hope the discussion—in fact, I would take it even further. I think that we may come to the point where we need to be entering into direct discussions with these governments with regard to these particular properties. I am talking about the 5,911 claims. There is a rather—I will not get into detail, but there is a rather elaborate circumstance of a company in Canada today that, with full knowledge of the situation, is pursuing and developing one of these pieces of property.

So, Mr. President, the point I want to make here is that this legislation is a direct extension of contemporary policy with Cuba that has been shaped by Republican Presidents and Democrat Presidents since Cuba was taken over by Fidel Castro. That is No. 1.

No. 2, I believe this entire question of property deserves and requires far more attention than it has received. And I think this is a valid attempt to deal with that. I am absolutely comfortable that the debate will modify this language before the end of the day, but I think it is appropriate that we are being drawn to this debate.

No. 3, the conditions in Cuba continue to be extensive human rights vio-

lations, extensive oppression, and imprisonment. It is an arbitrary, totalitarian government with its leadership showing no signs of any legitimate movement to democracy. And, Mr. President, I think it must be noted that Fidel Castro, exporter of terrorism, exporter of revolution, has made no—zero, none—accord to a movement to democracy or to renounce his adversarial, hostile attitude toward the people and Government of the United States of America.

And that is why I stand in support of the thrust of the legislation that is before this Senate today.

Mr. President, I yield the floor. I think the Senator from Connecticut is seeking recognition.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Chair. I appreciate my colleague's yielding to me in the middle of his remarks. And I just wish to make the point, I urge my colleagues here in the coming 2 days—I know that they have a lot of other things on their mind—to take a good, hard, close look at this bill. Because in the consideration of any matter like this, we ought to all ask ourselves several basic questions, the first being: Is what is being proposed in the best interests of our own country? That is the first question.

Put aside for a second what it may do to the targeted country where we are focusing the legislation. But what does it do to our foreign policy? And then, second, the obvious question: Is the legislation going to achieve the desired results? Those are two pretty basic questions we ought to ask ourselves.

Mr. President, when it comes to the issue of Cuba, unlike even North Korea apparently, but Vietnam, the People's Republic of China, the Eastern bloc countries—when still under the control of the Soviet Union—the Soviet Union itself, despite all of our difficulties, we managed to, at least for the most part, try to conduct our foreign policy in a way that made sense for us. That entailed having relations with them. And, in many of those cases that I have just mentioned, achieved the desired results such that today we find ourselves in a situation that is far beyond the imagination of most of us. The Eastern bloc countries that were under the control and the thumb of the Soviet Union today are struggling with their own form of democracy, but the world has changed.

I would make a case there were several reasons for that success. Certainly, on the one hand was the fact that their economies ended up being bankrupt because they spent such a tremendous percentage of their gross domestic product on arms.

One can argue that buildup had a desired effect economically. But I would also suggest, Mr. President, that it was the clever, clear idea that exposing the peoples of those countries to the fraud that was being perpetuated on them by

the controllers, as well as the options that existed elsewhere, also contributed to the change that occurred.

I want to get to that argument as we look at Cuba. But Cuba is unique. This is almost a domestic political debate rather than a foreign policy debate, I would say. If we could step back and say to ourselves, what is in our best interest and how do we collectively, in a wise and thoughtful way, try to propose ideas that are going to achieve, as soon as possible, the desired results. Those results are to bring democracy to Cuba. We all agree on that.

However, if you disagree with all of the tactics of how to achieve that, then you are immediately suspect and usually the victim of a lot of name calling about where your political leanings are. God forbid you disagree with how we might achieve the desired results.

And so my objection to the bill being offered by the Senator from North Carolina is not what the Senator from North Carolina or others desire. I do not believe there is probably any debate about that or any division here. I think every one of us would like to see democracy come to Cuba. I will not say restored to Cuba, because the notion somehow that prior to 1959 we were looking at a democratic government is specious. But let us bring democracy to Cuba.

How do we best achieve that? What steps should we take? How do we work collectively with our allies, in this hemisphere and elsewhere, to produce those results? If we can step back and do that without worrying whether we are going to offend various factions or groups in this country that have, at least as far as I am concerned, a certain amount of right to be red-hot angry over the situation because they are the ones who were victimized or their families, then I think we might actually make some significant steps forward.

I mentioned briefly a moment ago that my concern with title III of this bill is because it potentially exposes our country to a tremendous number of similar problems in other places where there will be claims of an equal degree of legitimacy. There are 38 countries in the world where we presently have, Mr. President, outstanding claims by U.S. citizens against those governments because properties have been expropriated and there has been no compensation. I have now become a U.S. citizen, and I'm going to go to U.S. courts and try and get paid for it."

(Mr. ABRAHAM assumed the chair.)

Mr. DODD. Mr. President, that will cause an explosion of demands on our U.S. court system. So the first test is, what is the impact of this legislation on us, put aside for a minute on Cuba, on us? And if my colleagues will merely look at just what it does if we only take the Cuban case and given the average court costs associated with such claims and multiply it by the number of claimants, it is a tremendous amount of money the United States

taxpayers will be asked to come up with so that our courts can handle this.

I would also argue that it is going to be rather difficult for us to turn down other claimants who lived in other countries at the time there was an expropriation without compensation. They are going to want the law changed for them as well.

So I urge my colleagues over this next day or so to please examine this provision of the law and understand that while you are trying, and I think all of us are, to effectuate some change in Cuba, that in doing so, we may be doing more injury to ourselves, adding more of a financial burden on ourselves, complicating things for ourselves without necessarily doing anything to Cuba.

I hope people will pay some attention to this, step back a little bit: "If I don't vote for this I will look like I am not for democracy in Cuba," or "I am in favor of Fidel Castro if I vote against the bill." That is not the case at all. Look at the provisions and what we are doing.

There are several basic questions we ought to be asking, and I will try over these next several minutes to address each of the questions that I think ought to be raised, aside from the basic questions about whether or not the bill before us is going to help or hurt the United States and, second, whether or not it is going to have the desired effects on the country in question, in this case Cuba, to effectuate the desired results, and that is a change to democracy.

Are we more likely as well to impose additional hardships on the people of Cuba, not the Government, but the people of Cuba? That is a legitimate question, it seems to me. Are we going to make the transition to democracy more difficult or less difficult if this legislation is adopted and signed into law? Finally, will this legislation place added strains on our relations with other governments?

I am not suggesting that this final question in and of itself ought to be the sole criteria, because if what you are doing is right, if it is good for us, if it produces the desired results, I am willing to accept the fact that some other governments may be uncomfortable.

I recall during the debate on whether or not to impose sanctions on the Government of South Africa, there were many of our allies that were uncomfortable. My reaction then, as it would be now, is so what, in some ways. We have to be a leader in the world, and if that is what it takes from time to time, then you ought to be willing to sacrifice that. But consider what you are doing. Make a very careful calculation as to whether you are going to produce results that you are seeking.

Lastly, as I said earlier, whether or not we are going to overwhelm our Federal court system, which I think is a very important question people ought to look at.

So, Mr. President, today we begin this debate. By the way, let me say to

my colleagues, I think the raising of the issue of the Medicare and Medicaid debate and long-term care issues of nursing homes, while obviously not the subject of the bill before us, I think does raise a legitimate question, and that is, here we are now going to consume 2½ days of the Senate's time on this one bill. A cloture motion was filed immediately. So we are now going to take up 2 days. We did not have 1 day of hearings on Medicare or Medicaid with regard to the proposal that is now being considered by the Finance Committee.

I think Members of this body raise a legitimate issue when they question whether or not the priorities of the American public, if given the choice to express themselves, would have this body spend 2 days debating Medicare, Medicaid and long-term health care conditions or Cuba. I do not have any doubt in my mind what their priorities would be.

So we are going to end up next week or the week after with 20 hours equally divided, 10 hours on a side, to discuss all of Medicare, all of Medicaid, all of the tax breaks, all of the earned income tax credit provisions, and yet I am going to have 2½ days, apparently, to talk about one bill affecting Cuba.

Maybe somebody else thinks that is the priority of the country. I do not think so. Yet, that is the position we are in, because the majority has decided that is what the order of business will be.

I would have urged we spend 2 days with a good healthy debate on Medicare and Medicaid and long-term health care without necessarily having a bill in front of us, but a good solid discussion of what we are going to do in the next several weeks to millions of Americans and their families, and yet we are going to spend 2½ days on an issue that has not even had a vote in the Foreign Relations Committee. We had some hearings at least on the Cuba bill. No hearings on Medicare, Medicaid or long-term nursing home care and, as the Senator from Arkansas pointed out a moment ago, we are now going to strip regulations from legislation we adopted in a bipartisan fashion only a few years ago.

Mr. President, I want to turn, if I can, in this debate about Cuba to the decisions reached by President Clinton just a few days ago. Those decisions have now been highly criticized, a moral outrage has been expressed over changes in regulations affecting the Government of Cuba and related matters. I have seen press reports that the majority leader took strong exception to the Executive order and others have been trying to one-up each other as to who can come up with the most outrageous statement to describe the decisions taken by President Clinton.

I am not sure every report accurately reflects the feelings of my colleagues, but nonetheless some rather extreme statements have been made.

As I understand it, the President's policy initiatives are, in large measure, perfectly consistent with related provisions contained in the House-passed bill and the most recent version of the Senate substitute which is before us. So I am somewhat surprised that there is such a vehement attack on President Clinton and his proposals, where a mere simple reading of the bill before us includes many of the things the President did by Executive order.

Section 712 of the version of the amendment available to me specifically authorizes the President of the United States, and I quote:

To furnish assistance to nongovernmental organizations to support democracy building efforts in Cuba.

That was a key element of the President's announcement last Friday. Section 722 of that same measure authorized the President to, and I quote:

Establish and implement an exchange of news bureaus between the United States and Cuba.

That is another key element of the President's actions. Surely, the supporters of this legislation do not object to the implementation of these measures that they themselves have recommended in the context of the legislation before us.

What about the other elements of last Friday's announcement? Do my colleagues object to provisions which seek to put an end to the profiteering associated with legal transfers of funds—legal transfers of funds—by Cuban-American families in this country to their family members in Cuba seeking to emigrate to the United States under provisions of the United States-Cuban immigration agreement?

That is why the President has authorized Western Union to open offices in Cuba to make legal transfers of this nature easier and cheaper. Today, the families in this country trying to provide assistance to their families in Cuba, in many cases, get held up. It is a mugging, in effect, the prices they have to pay.

So here we are setting up Western Union offices in that country to help families, Cuban-American families, legally transfer funds to assist them. That is part of what the President did. Is that not what we ought to be trying to do in these particular cases? Or do our colleagues take issue with the enhanced enforcement measures announced by the President? These measures would step up enforcement of sanctions regulations, as well as compliance with the Neutrality Act. The President has also instructed that the Office of Foreign Assets Control, the embargo enforcement agency, be strengthened in Washington and in Miami.

I am hard pressed to understand the moral outrage over the President's decisions when virtually every one of them are at least *de facto* or *de jure* included in the bill we are now considering in part, and yet that is exactly—exactly—the case.

Now I would like to turn to the bill before us. Many stated purposes of the legislation are laudable and, again, let me emphasize, every single Member in this body I know, if they could will it, tonight would will that there be change in Cuba. That is not the issue. Every one of us would like to see democracy come to that country.

Secondly, Mr. President, I recall being offended when people would talk about my ethnicity in ways in which all of us who happened to be of one particular group are of a particular mindset—that they could speak for everybody who was an Irish-American. Today, to suggest somehow that every Cuban-American thinks exactly alike is insulting.

There is a great diversity of thought within the Cuban-American community as to how we ought to address the problem of Cuba. None that I know of disagree with the bottom line; that is, that we should seek to bring democracy to that country. But there is an honest division of thought among Cuban-Americans who believe there might be better ways of achieving those results.

It is offensive to many, some of whom even disagree with their fellow Cuban-Americans, that somehow they ought to be maligned because they think there may be a better way of achieving the desired results. Certainly, we ought to take that into consideration as we look at the legislation before us.

None of us argue about the goals. But the measures that we take have to be examined and examined carefully. All of us, I hope, would like to see that the transition from the present government in Cuba to democracy would happen without bloodshed. I hope it is not a point of contention that, ideally, we ought to try to achieve the same kind of peaceful transformation we saw happen in Poland, Hungary, Czechoslovakia, and other of the New Independent States. Many thought it would come to a war one day. I thought so, too. But I think all of us are grateful today for the fact that the transition—occurred without a shot being fired at least in recent times.

I think it would be in all of our interests to get a peaceful, bloodless transfer of power in Cuba and to figure out ways in which that could be advanced.

Certainly, I think we could have serious and negative implications on our Federal courts. I mentioned this at the outset of my remarks, but I want to spend some time on it because this is a critical piece of this bill.

Again, I urge my colleagues, or their staffs who may be listening, to look at these sections and understand the implications, because I think they could have profound results if we are not careful. It could have implications on some of our closest trading partners and run the risk of subjecting our country to reciprocal kinds of actions in the coming years.

I happen to believe it is imperative that our colleagues have a better un-

derstanding of the true impact of the legislation on the conduct of U.S. foreign policy and on international trade and commerce. Clearly, I think additional hearings and committee consideration of the bill would be the best way to achieve that outcome. That is, apparently, not going to happen.

I have to hand it to the authors of the legislation. They have tinkered with the language in this bill in an effort to conceal and obscure some of its fundamental problems. Unfortunately, none of the changes remove the inherent flaws.

The Helms-Dole substitute is 40 pages in length. It has gone through significant changes since being first introduced back in February. As I mentioned earlier, no hearings have been held in the Senate on later versions of the bill, including the one before us. Again, I doubt that is going to occur. My colleagues ought to look carefully at the bill and analyze what is in it.

This legislation breaks significant new legal ground in reversing more than 40 years of international and domestic law in the practice and treatment of confiscated property. Nor, I point out, is there universal support for the bill among those whose property was expropriated.

I hope my colleagues will pay attention to this. This is important. Some of the very individuals who have the most interest in this legislation—the certified American claimants—have gone on record in opposition, Mr. President, to the centerpiece of this legislation.

David Wallace, chairman and chief executive officer of Lone Star Industries, one of the major corporate claimants in Cuba, has made it clear where he stands on the central provisions of this bill. He is opposed to them, Mr. President. Let me state for the record that Mr. Wallace is a resident of my State of Connecticut and the headquarters of Lone Star is located in Stamford, CT.

Mr. Wallace speaks not only for Lone Star, but for a number of other important claimants, who are members of the Joint Corporate Committee on Cuban Claims, which he chairs. That organization represents 30 of the major corporate claimants holding more than half of the total value of certified claims.

He has written to me and other Members several times on this issue, most recently on October 10. He raised some very critical issues that I want to bring to the attention of my colleagues.

I ask unanimous consent to have his letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT CORPORATE COMMITTEE
ON CUBAN CLAIMS,
Stamford, CT, October 10, 1995.

DEAR SENATOR: I recently wrote to urge you to oppose Title III of legislation, the "Cuban Liberty and Democratic Solidarity Act," that purports to protect the property rights of U.S. nationals against the confiscatory takings by the Castro regime. At that

time, Senator Helms was planning to attach this legislation as an amendment to the then-pending Foreign Operations Appropriations Bill. It is my understanding that this legislation now may be brought to the Senate floor as a free-standing bill as early as Wednesday of this week. I am writing once again to urge you to oppose this legislation insofar as it contains Title III in its present form because it poses the most serious threat to the property rights of U.S. certified claimants since the Castro regime's unlawful expropriations more than three decades ago.

In the rush to pass this legislation and thereby demonstrate our firm resolve against Fidel Castro, the far-reaching domestic consequences of this legislation have received far too little attention. In my letter of September 20th, I wrote of the irreparable harm certified claimants would suffer if Title III of this legislation is passed. For the first time ever and contrary to international law, this legislation would permit a specified national origin group, Cuban-Americans, who were not U.S. citizens at the time their property was confiscated, to file Title III lawsuits against the Government of Cuba for the property losses they suffered as Cuban nationals. Indeed, this legislation even permits Cuban exiles abroad to file lawsuits in U.S. federal courts if they establish a corporation in the United States for the purpose of pursuing any claim they may have against Cuba. The creation of a new right to sue is never an inconsequential matter yet the careful scrutiny such a provision deserves has been disturbingly lacking to date.

We can reasonably expect plaintiffs' attorneys to exploit this newly created lawsuit right to the fullest extent possible, creating a tide of litigation that will all but sweep away the value of the claims currently held by U.S. certified claimants. Each time one of those lawsuits is reduced to a final judgment against Cuba, the injury to U.S. certified claimants increases. Ultimately, the cumulative weight of those judgments will extinguish any possibility the certified claimants ever had of being compensated. A virtually bankrupt Cuba cannot be expected to compensate the U.S. certified claimants, who hold claims valued today at nearly \$6 billion, when it is also facing the prospect of satisfying potentially tens of billions of dollars in federal court judgments held by Cuban-Americans, whose claims have been valued as high as \$94 billion.

Our already overburdened federal courts will have to deal with the daunting task of adjudicating some 300,000 to 430,000 lawsuits, according to one estimate that has never been refuted. (And that does not even take into account the number of additional claims that we can anticipate will be brought on equal protection grounds by Vietnamese-Americans, Polish-Americans, Chinese-Americans and other national origin groups.) Indeed, a litigation explosion appears to be exactly what the bill's sponsors intend: They hope to enlist an army of lawyers to launch a barrage of federal court lawsuits against Cuba in order to hopelessly entangle the island in lawsuits. In so doing, title to property in Cuba will be clouded for years to come, thus ensuring that every effort at privatization or market-oriented economic reform will be doomed to failure. In a classic case of overkill, however, this endless litigation will not only encumber the current regime, but will impose an onerous burden on a future democratic government that will make normalization of relations with the United States virtually impossible.

Faced with this prospect, the president, as an exercise of executive prerogative in the conduct of foreign affairs, may elect to dismiss those federal court judgments pending against a friendly government in Cuba. How-

ever, dismissing those lawsuits may not turn out to be such a simple matter because the U.S. Government may very well find itself liable for tens of billions of dollars in property takings claims to this large class of citizens who were non-U.S. nationals at the time they lost properties in Cuba. In short, if Title III is enacted, we will be left either with the prospect of protracted litigation against Cuba, which will indefinitely delay normalization of relations with a post-Castro Cuban government, or enormous liability to possibly hundreds of thousands of Cuban-Americans should those federal court judgments be dismissed as an incident of normalization.

Amazingly, the Senate is poised to vote on this legislation without the benefit of the Judiciary Committee's views on these and other critical issues that fall within its purview. The Judiciary Committee has held no hearings on Title III, has not reviewed it, nor has it, or the Foreign Relations Committee for that matter, issued any reports on it. It is astonishing that we may be so casually headed toward putting our government, and ultimately U.S. taxpayers, on the line for tens of billions of dollars worth of Cuban-American claims in a foreign land. The only conclusion that can be drawn is that this legislation is being rushed to a vote before these serious issues can be thoroughly considered by the Senate through its normal procedures. Given the profound domestic implications of this legislation beyond the obvious and immediate injury to U.S. certified claimants, I urge you to oppose Title III of this legislation if for no other reason than to ensure that these concerns receive the careful deliberation they warrant.

Sincerely,

DAVID W. WALLACE,
Chairman.

Mr. DODD. Mr. President, let me quote, if I can here, part of what he says in this letter:

Amazingly, the Senate is poised to vote on this legislation without the benefit of the Judiciary Committee's views on these and other critical issues that fall within its purview. The Judiciary Committee has held no hearings of Title III, has not reviewed it, nor has it, or the Foreign Relations Committee for that matter, issued any reports on it. It is astonishing that we may be so casually headed toward putting our government, and ultimately U.S. taxpayers, on the line for tens of billions of dollars worth of Cuban-American claims in a foreign land. The only conclusion that can be drawn is that this legislation is being rushed to a vote before these serious issues can be thoroughly considered by the Senate through its normal procedures. Given the profound domestic implications of this legislation beyond the obvious and immediate injury to U.S. certified claimants, I urge you to oppose Title III of this legislation if for no other reason than to ensure that these concerns receive the careful deliberation they warrant.

Mr. President, this is a letter from a claimant. This is one of the people who was injured by what happened, seriously, when the Castro Government took over. Do not believe me; listen to them. They are the ones urging that some prudence be followed before we rush to judgment with this bill in order to satisfy the domestic concerns of some constituency groups, who, I might add, I do not think are necessarily all being represented when they are spoken of collectively.

I agree with Mr. Wallace when he concludes that "We can reasonably ex-

pect plaintiffs' attorneys to exploit this newly created lawsuit right to the fullest extent possible, creating a tide of litigation that will all but sweep away the value of the claims currently held by the certified claimants."

Mr. Wallace also submitted detailed written testimony to the Committee on Foreign Relations in which he explained the joint committee's opposition to this bill. These are the U.S. citizens that are the injured parties. They are the ones telling us that this bill is wrong and will cause real problems. We ought to be listening to them.

Among the arguments I found most compelling was that this legislation would produce a dramatic expansion of existing claims pool seeking compensation from Cuba. The vastly larger pool "would serve as a significant disincentive for a post-Castro Cuban Government to enter into meaningful settlements of negotiations with the United States, given the sheer enormity of the outstanding claims and the practical impossibility of satisfying all those claims."

Mr. Wallace goes on to state that "We, the joint committee, believe that a second tier of claimants will delay and complicate the settlement of certified claims and may undermine the prospects for serious settlement negotiations with the new Cuban Government that will come into power at some point."

He concluded as follows: "It is our view, based upon well-established principles of international law, that individuals and entities who were Cuban nationals at the time their property was confiscated must seek resolution of their claims in Cuban courts, under Cuban law."

Obviously, that is not going to happen now, Mr. President. We are talking about this taking effect when there is a transition government in place—hopefully and ideally, one that will respond. But Cuban nationals can then go back to that court in Cuba and satisfy them. To allow it, all of a sudden, to come to our courts raises very serious problems. In future Cuban governments, claims of former Cuban nationals may be fairly determined.

Mr. President, I urge my colleagues to take the time to review Mr. Wallace's correspondence and statement in their entirety. Taken together, they provide a very careful, reasoned analysis of why giving former Cuban nationals the private right of action to sue in United States courts will be detrimental to the interests of United States claimants.

I ask unanimous consent Mr. President at this juncture to have printed in the RECORD all of the correspondence and testimony from Mr. Wallace which he has sent to most offices, but for those who may not have seen them.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT CORPORATE COMMITTEE

ON CUBAN CLAIMS,

Stamford, CT, October 10, 1995.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR DODD: I recently wrote to urge you to oppose Title III of legislation, the "Cuban Liberty and Democratic Solidarity Act," that purports to protect the property rights of U.S. nationals against the confiscatory takings by the Castro regime. At that time, Senator Helms was planning to attach this legislation as an amendment to the then-pending Foreign Operations Appropriations Bill. It is my understanding that this legislation now may be brought to the Senate floor as a free-standing bill as early as Wednesday of this week. I am writing once again to urge you to oppose this legislation insofar as it contains Title III in its present form because it poses the most serious threat to the property rights of U.S. certified claimants since the Castro regime's unlawful expropriations more than three decades ago.

In the rush to pass this legislation and thereby demonstrate our firm resolve against Fidel Castro, the far-reaching domestic consequences of this legislation have received far too little attention. In my letter of September 20th, I wrote of the irreparable harm certified claimants would suffer if Title III of this legislation is passed. For the first time ever and contrary to international law, this legislation would permit a specified national origin group, Cuban-Americans, who were not U.S. citizens at the time their property was confiscated, to file Title III lawsuits against the Government of Cuba for the property losses they suffered as Cuban nationals. Indeed, this legislation even permits Cuban exiles abroad to file lawsuits in U.S. federal courts if they establish a corporation in the United States for the purpose of pursuing any claim they may have against Cuba. The creation of a new right to sue is never an inconsequential matter yet the careful scrutiny such a provision deserves has been disturbingly lacking to date.

We can reasonably expect plaintiffs' attorneys to exploit this newly created lawsuit right to the fullest extent possible, creating a tide of litigation that will all but sweep away the value of the claims currently held by U.S. certified claimants. Each time one of those lawsuits is reduced to a final judgment against Cuba, the injury to U.S. certified claimants increases. Ultimately, the cumulative weight of those judgments will extinguish any possibility the certified claimants ever had of being compensated. A virtually bankrupt Cuba cannot be expected to compensate the U.S. certified claimants, who hold claims valued today at nearly \$6 billion, when it is also facing the prospect of satisfying potentially tens of billions of dollars in federal court judgments held by Cuban-Americans, whose claims have been valued as high as \$94 billion.

Our already overburdened federal courts will have to deal with the daunting task of adjudicating some 300,000 to 430,000 lawsuits, according to one estimate that has never been refuted. (And that does not even take into account the number of additional claims that we can anticipate will be brought on equal protection grounds by Vietnamese-Americans, Polish-Americans, Chinese-Americans and other national origin groups.) Indeed, a litigation explosion appears to be exactly what the bill's sponsors intend: They hope to enlist an army of lawyers to launch a barrage of federal court lawsuits against Cuba in order to hopelessly entangle the island in lawsuits. In so doing, title to property in Cuba will be clouded for years to come, thus ensuring that every ef-

fort at privatization or market-oriented economic reform will be doomed to failure. In a classic case of overkill, however, this endless litigation will not only encumber the current regime, but will impose an onerous burden on a future democratic government that will make normalization of relations with the United States virtually impossible.

Faced with this prospect, the president, as an exercise of executive prerogative in the conduct of foreign affairs, may elect to dismiss those federal court judgments pending against a friendly government in Cuba. However, dismissing those lawsuits may not turn out to be such a simple matter because the U.S. Government may very well find itself liable for tens of billions of dollars in property takings claims to this large class of citizens who were non-U.S. nationals at the time they lost properties in Cuba. In short, if Title III is enacted, we will be left either with the prospect of protracted litigation against Cuba, which will indefinitely delay normalization of relations with a post-Castro Cuban government, or enormous liability to possibly hundreds of thousands of Cuban-Americans should those federal court judgments be dismissed as an incident of normalization.

Amazingly, the Senate is poised to vote on this legislation without the benefit of the Judiciary Committee's views on these and other critical issues that fall within its purview. The Judiciary Committee has held no hearings on Title III, has not reviewed it, nor has it, or the Foreign Relations Committee for that matter, issued any reports on it. It is astonishing that we may be so casually headed toward putting our government, and ultimately U.S. taxpayers, on the line for tens of billions of dollars worth of Cuban-American claims in a foreign land. The only conclusion that can be drawn is that this legislation is being rushed to a vote before these serious issues can be thoroughly considered by the Senate through its normal procedures. Given the profound domestic implications of this legislation beyond the obvious and immediate injury to U.S. certified claimants, I urge you to oppose Title III of this legislation if for no other reason than to ensure that these concerns receive the careful deliberation they warrant.

Sincerely,

DAVID W. WALLACE,
Chairman.

—
LONE STAR INDUSTRIES, INC.,
Stamford, CT, July 26, 1995.

Hon. CHRISTOPHER J. DODD,
Russell Senate Office Building, Washington,
DC.

DEAR SENATOR DODD: On behalf of the Joint Corporate Committee on Cuban Claims, of which I serve as Chairman, and as your constituent, I am writing to express my appreciation for your support on the property claims issue. In particular, I want to commend you for your thoughtful views on S. 381, the Cuban Liberty and Democratic Solidarity Act, and to offer the assistance of the Committee as this legislation is considered by the Senate.

The Joint Corporate Committee represents more than thirty U.S. corporations with certified claims against the Government of Cuba. Collectively, our members hold more than one-half of the \$1.6 billion in outstanding certified corporate claims. As you know, the Joint Corporate Committee opposes the provisions of the Helms legislation dealing with property claims, and we have detailed our objections in testimony we submitted for the record to the Foreign Relations Committee.

We understand that Senator Helms is contemplating a strategy of attaching his legislation to the State Department Authoriza-

tion Bill or the Foreign Aid Bill that will be before the Senate shortly. Please know that we stand ready to support your efforts in opposing this legislation, and have asked the Committee's Washington, D.C. counsel, Kirk O'Donnell of Akin, Gump, Strauss, Hauer & Feld, to work with you in that regard.

I also have asked our counsel to arrange a meeting with you in the near future in order that we might further explore how our Committee can best be of assistance in this effort. I look forward to meeting you and working with you on a more constructive legislative approach.

Sincerely,

DAVID W. WALLACE.

STATEMENT OF DAVID W. WALLACE, CHAIRMAN
JOINT CORPORATE COMMITTEE ON CUBAN
CLAIMS ON S. 381, THE CUBAN LIBERTY AND
DEMOCRATIC SOLIDARITY ACT OF 1995—SUB-
MITTED TO THE SUBCOMMITTEE ON WESTERN
HEMISPHERE AND PEACE CORPS AFFAIRS,
THE COMMITTEE ON FOREIGN RELATIONS,
U.S. SENATE—JUNE 14, 1995

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to submit this statement expressing the views of the Joint Corporate Committee on Cuban Claims with respect to S. 381, the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995."

The Joint Corporate Committee on Cuban Claims, of which I serve as Chairman, represents more than thirty U.S. corporations with certified claims against the Government of Cuba stemming from the Castro regime's unlawful confiscation of U.S. property without just compensation. Our member corporations hold more than one-half of the \$1.6 billion in outstanding certified corporate claims. Since its formation in 1975, the Committee has vigorously supported the proposition that before our government takes any steps to resume normal trade and diplomatic relations with Cuba, the Government of Cuba must provide adequate compensation for the U.S. properties it unlawfully seized.

Although I am submitting this statement in my capacity as Chairman of the Joint Corporate Committee, I would like to note parenthetically that I also serve as Chairman and Chief Executive Officer of Lone Star Industries, Inc. Lone Star is a certified claim holder whose cement plant at Mariel was seized by the Cuban Government in 1960. Lone Star's claim is valued at \$24.9 million plus 6% interest since the date of seizure.

On behalf of our Committee, I want to commend the significant contribution you have made to the debate on U.S.-Cuban policy by focusing renewed attention on the Castro regime's unlawful expropriation of U.S. property—an issue that all too often gets lost in the debate over the wisdom of the embargo policy. Recognizing the important role that trade and investment by U.S. businesses will have in Cuba's economic reconstruction and its eventual return to the international community, evidence of concrete steps by the Government of Cuba towards the satisfactory resolution of the property claims issue must be an essential condition for the resumption of economic and diplomatic ties between our nations.

I think it is important to recall the essential reason for which the U.S. Government first imposed a partial trade embargo against Cuba in 1960, following by the suspension of diplomatic relations in 1961 and the imposition of a total trade embargo in 1962. These actions were taken in direct response to the Castro regime's expropriation of properties held by American citizens and companies without payment of prompt, adequate and effective compensation as required under U.S. and international law. This illegal confiscation of private assets was the

largest uncompensated taking of American property in the history of our country, affecting scores of individual companies and investors in Cuban enterprises.

These citizens and companies whose property was confiscated have a legal right recognized in long-established international law to receive adequate compensation or the return of their property. Indeed, Cuba's Constitution of 1940 and even the decrees issued by the Castro regime since it came to power in 1959 recognized the principle of compensation for confiscated properties. Pursuant to Title V of the International Claims Settlement Act, the claims of U.S. citizens and corporations against the Cuban Government have been adjudicated and certified by the Foreign Claims Settlement Commission of the United States. Yet to this day, these certified claims remain unsatisfied.

It is our position that lifting the embargo prior to resolution of the claims issue would be unwise of a matter of policy and damaging to our settlement negotiations posture. First, it would set a bad precedent by signaling a willingness on the part of our nations to tolerate Cuba's failure to abide by precepts of international law. Other foreign nations, consequently, may draw the conclusion that unlawful seizures of property can occur without consequence, thereby leading to future unlawful confiscations of American properties without compensation. Second, lifting the embargo would remove the best leverage we have in compelling the Cuban Government to address the claims of U.S. nationals and would place our negotiators at a terrible disadvantage in seeking just compensation and restitution. We depend on our government to protect the rights of its citizens when they are harmed by the unlawful actions of a foreign agent. The Joint Corporate Committee greatly appreciates the steadfast support our State Department has provided over the years on the claims issue. However, we recognize that the powerful tool of sanctions will be crucial to the Department's ability ultimately to effect a just resolution of this issue.

Apart from the need to redress the legitimate grievances of U.S. claimants, we also should not overlook the contribution these citizens and companies made to the economy of pre-revolutionary Cuba, helping to make it one of the top ranking Latin American countries in terms of living standards and economic growth. Many of these companies and individuals look forward to returning to Cuba to work with its people to help rebuild the nation and invest in its future. As was the case in pre-revolutionary Cuba, the ability of the Cuban Government to attract foreign investment once again will be the key to the success of any national policy of economic revitalization.

However, unless and until potential investors can be assured of their right to own property free from the threat of confiscation without compensation, many U.S. companies simply will not be willing to take the risk of doing business with Cuba. It is only by fairly and reasonably addressing the claims issue that the Cuban Government can demonstrate to the satisfaction of the business community its recognition of and respect for property rights.

We are pleased that S. 381 does not waver from the core principle, firmly embodied in U.S. law, which requires the adequate resolution of the certified claims before trade and diplomatic relations between the U.S. and Cuban Governments are normalized. However, we are concerned with provisions of Section 207 of the revised bill that condition the resumption of U.S. assistance to Cuba on the adoption of steps leading to the satisfaction of claims of both the certified claimants and Cuban-American citizens who were not

U.S. nationals at the time their property was confiscated. Notwithstanding the modifying provisions which accord priority to the settlement of the certified claims and give the President authority to resume aid upon a showing that the Cuban Government has taken sufficient steps to satisfy the certified claims, this dramatic expansion of the claimant pool, as a practical matter, would necessarily impinge upon the property interests of the certified claimants.

Even though the claimants who were not U.S. nationals at the time of the property loss would not enjoy the spousal rights that the certified claimants enjoy, the recognition of a second tier of claimants by the U.S. Government at a minimum would necessarily color, and likely make more complicated, any settlement negotiations with Cuba to the detriment of the certified claimants.

Moreover, the fact that the legislation gives priority for the settlement of certified property claims is of little consequence within the context of such a vastly expanded pool of claimants that seemingly defies a prompt, adequate and effective settlement of claims. In addition, once this second tier of claimants is recognized, it would be exceedingly difficult politically for the President to exercise his waiver authority. Finally, this dramatic expansion of the claimant pool would serve as a significant disincentive for a post-Castro Cuban Government to enter into meaningful settlement negotiations with the United States given the sheer enormity of the outstanding claims and the practical impossibility of satisfying all those claims.

In short, while we are sympathetic to the position of those individuals and entities who were not U.S. nationals at the time their property was seized, we believe that U.S. Government recognition and representation of this group of claimants—even falling short of spousal of their claims with a post-Castro government in Cuba—would harm the interests of the already certified claimants. We believe that the recognition of a second tier of claimants will delay and complicate the settlement of certified claims, and may undermine the prospects for serious settlement negotiations with the Cuban Government.

It is our view, based on well-established principles of international law, that individuals and entities who were Cuban nationals at the time their property was confiscated must seek resolution of their claims in Cuban courts under Cuban law under a future Cuban Government whereby the respective property rights of former and current Cuban nationals may be fairly determined. In taking that position, we categorically reject any notion that a naturalized American has any lesser degree of right than a native-born American. That objectionable and irrelevant notion serves only to cloud the real issue here, and that is simply the question of what rights are pertinent to a non-national as of the date of injury. Simply put, international law does not confer retroactive rights upon naturalized citizens.

Many of the same objections noted above also apply to Section 302 of the revised bill, which allows U.S. nationals, including hundreds of thousands of naturalized Cuban-Americans, to file suit in U.S. courts against persons or entities that traffic in expropriated property. We believe this unrestricted provision also will adversely affect the rights of certified claimants. By effectively moving claims settlement out of the venture of the Foreign Claims Settlement Commission and into the federal judiciary, this provision can be expected to invite hundreds of thousands of commercial and residential property lawsuits. Apart from the enormous,

if not overwhelming, burden these lawsuits will place on our courts, this provision raises serious implications with respect to the Cuban Government's ability to satisfy certified claims.

First, allowing Cuba to become liable by way of federal court judgments for monetary damages on a non-dismissible basis necessarily will reduce whatever monetary means Cuba might have to satisfy the certified claims. Second, this expected multiplicity of lawsuits undoubtedly will cloud title to property in Cuba for years, thereby lessening the prospects for restitutionary approaches in satisfaction of some of these claims. Moreover, under this provision, the President would have no power to dismiss these suits as an incident of normalizing relations with a democratically elected government in Cuba once they are commenced. Consequently, the foreign investment will be crucial to Cuba's successful implementation of market-oriented reforms will be all but precluded by these unresolved legal proceedings.

In conclusion, we want to commend you for your efforts in raising the profile of the property claims issue and focusing attention on the importance of resolving these claims to the full restoration of democracy and free enterprise in Cuba. We also recognize and appreciate the efforts you have made to modify this legislation in response to the concerns expressed by the certified claimant community; however, we hope that you will further consider our continuing concerns regarding the implications of this legislation for the legal rights of certified claimants, an already overburdened court system, the claims settlement process and the orderly disposition of claims, and the post-Castro investment environment.

Mr. DODD. This legislation calls into question the fundamental concept, I might point out, of equal protection under our Constitution by granting a kind of judicial relief to one category of individuals that no other group has ever been granted.

This legislation is not proposed to give similar rights, as I pointed out earlier, to the former nationals—now U.S. citizens—of 37 other countries in the world where there are outstanding claims: Polish-Americans, Chinese-Americans, German-Americans, Vietnamese-Americans.

Are we to say to these same people who have been injured by Marxist governments, Communist governments, who have had their property taken without compensation, "Sorry, this law does not apply to you. It only applies to Cuban-Americans." I think we will have a hard time making that case to other people who come forward and seek equal treatment.

I urge my colleagues to just examine whether or not the enormity of that problem can be handled by our court systems. Is that the right way to go?

This legislation would vastly expand the traditional definition of who is a United States claimant for purposes of United States law, to include any Cuban national who is presently a United States citizen, regardless of the citizenship at the time of the expropriation, as well as any person who incorporates himself or herself as a business entity under United States law prior to this bill becoming law.

The introduction of this legislation has served as an open invitation to Cuban-Americans and other foreign nationals around the globe who may have had property taken in Cuba to come to the United States to seek redress. I am not arguing about the illegitimacy of it, the horror of it, the wrongness of it at all. That is not my point. That is not the issue here.

If Cubans have left Cuba and gone someplace else, this bill says to them, "come here and incorporate yourself before this bill is signed into law and you have access to the United States courts."

Again, I urge my colleagues to look at this bill. Whatever your feelings are about Fidel Castro and Cuba, you are about to sign on to something here that could have profound and incredible implications for our court system.

It is not clear, Mr. President, how the courts are going to attest to the validity of such claims, nor do we have any firm estimate of the costs associated with the legal mandate.

Initially, CBO concluded that it does not have "sufficient information for estimating the number of such filings and the total cost that would be incurred by the Judiciary," although it did indicate that the costs to the U.S. Federal court system per case filed would be \$4,500.

Now assuming the 5,911 claims that are filed, between \$4,500 and \$5,000 a claim, if, in fact, you expand the universe here, consider the implications. The math is not that hard if you are going to have several hundred thousand people seeking access to these courts.

Now, I point out to my colleagues that CBO later reversed its earlier conclusion that they could not determine how much the costs would be. They came back and said the costs may be \$7 million.

The key assumption CBO made, Mr. President, in arriving at this number was that very few suits would be filed at all. That assumption has been challenged, I might add, by a number of experts on the issue.

The Senator from Rhode Island, Senator PELL, and I wrote to the Congressional Budget Office raising questions about this estimate as well. And, Mr. President, I point out we have not had any response to our latest inquiries, going back some time, about a new estimate.

One should be mindful, Mr. President, of the fact that an estimated 1 million Cuban emigres currently live in the United States, many of whom left behind business and other property when they fled the Castro regime, and has been expropriated without compensation.

The State Department has estimated there are approximately \$94 billion in outstanding Cuban-American claims. That is in addition to the \$6 billion in certified United States claims. A very detailed analysis has been done to give some rough estimates as to the number

of claims that may be outstanding if this bill becomes law.

I urge my colleagues to review the August 25 letter sent to the Director of CBO by attorney Robert Muse, an attorney for one of the major U.S. certified claimants. In that letter he sets forth in some detail the various categories of property claims that could be generated, and estimates that the total number of lawsuits could reach 430,000. The costs could end up—just the court costs—in excess of \$2 billion.

I ask unanimous consent that those documents be printed in the RECORD at this juncture.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MANSFIELD & MUSE,
Washington, DC, August 25, 1995.

Ms. JUNE E. O'NEILL,
Director, Congressional Budget Office, U.S. Congress, Washington, DC.

Re CBO Letter of July 31, 1995 Concerning Senator Helms' Proposed "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995."

DEAR MS. O'NEILL: As you know, Title III of Senator Helm's proposed legislation creates a cause of action in U.S. federal courts against agencies or instrumentalities of Cuba—as well as foreign and Cuban individuals or companies—that in the words of the bill "traffic" in properties "confiscated" by the government of Cuba. It makes no difference under Title III whether the owners of those properties were U.S. or Cuban nationals at the time of their property losses. So long as the potential litigant is a U.S. citizen at date of filing, he or she (or "it" in the case of a company) is free to institute a Title III lawsuit asserting, in the language of the statute, ownership or a "claim" to property confiscated in Cuba at any time after January 1, 1959. With these things in mind, CBO was asked how many such lawsuits might be expected if the LIBERTAD bill is enacted? It is the response to that question, given in your July 31 letter to Senator Helms, which concerns my client, Amstar Property Rights Holdings, Inc., and other holders of claims certified against Cuba by the Foreign Claims Settlement Commission.

In your first letter (of July 24) on this subject, written to Chairman Gilman of the House International Relations Committee, you said with respect to Title III that, in addition to nearly 6,000 claims on file with the Foreign Claims Settlement Commission, "... about 15,000 U.S. nationals who have not filed claims with the Commission [i.e. the Foreign Claims Settlement Commission] may also have had commercial property confiscated in Cuba." I gather from talking with Ms. Susanne Mehlman of your Office that the figure of 15,000 "who have not filed claims" was meant to describe naturalized Cuban Americans and Cuban companies that did not qualify to file claims with the Commission in the 1960's (because they were not U.S. citizens when their properties were taken), but, that your Office thought would qualify to file lawsuits with respect to those properties if Title III of the LIBERTAD bill is enacted.

In your July 31 letter to Senator Helms you refrain from stating any figure as to the number of Cuban Americans that may be expected to file Title III lawsuits. However, based upon a recent revision to the LIBERTAD bill restricting lawsuits to those in which the "amount in controversy" exceeds \$50,000, you offer the opinion that, "... the number of [Cuban American] claims would be quite small."

The number of potential Title III litigants is a matter of understandable concern to individuals and companies, such as my client, that hold certified claims against Cuba. The prospects of these claimants receiving a favorable disposition of their long-held claims are very much dependent upon those claims not being diluted in a sea of newly-created Title III causes of action conferred on companies and individuals that did not meet the U.S. nationality requirement of the Foreign Claims Settlement Commission's Cuba program.¹ The reasoning of the certified claimants in opposing Title III of the LIBERTAD bill is straightforward. Each federal court judgment entered against Cuba on behalf of a Cuban national at date of property loss constitutes an additional claim on the limited resources of that country, thereby diluting the value of those claims certified by the Foreign Claims Settlement Commission.² It is blindingly obvious what Title III is meant to do, that is, to bypass the adjudicatory process of the Foreign Claims Settlement Commission—that Cuban Americans did not qualify for on prerequisite citizenship grounds—and create an unprecedented claims program in the federal courts on behalf of that specific national-origin group.

With the foregoing concerns of certified claimants in mind, I offer the following observations: First, I believe that your July 24 letter's figure of a maximum of 15,000 lawsuits to be expected from Cuban American individuals and companies if the LIBERTAD bill is enacted constitutes a serious understatement of the real number of such lawsuits. Second, your Office's subsequent failure to provide any estimate of potential lawsuits in your July 31 letter—except to say that the number will be "quite small"—warrants, I respectfully submit, at least some explanation. Third, your descriptions of Title III as only creating a right for U.S. nationals to "take civil action against persons or companies that traffic in confiscated properties," obscures a key provision of the LIBERTAD bill; that is, that it allows direct suits against the nation of Cuba itself—via its various agencies and instrumentalities—for "trafficking" in confiscated property.³ Certain proponents of the LIBERTAD bill have created the entirely misleading impression that it is aimed only at what they describe as "third party [i.e. corporate] 'traffickers,'" and, because there are comparatively few such corporate "traffickers", few lawsuits are to be expected if Title III is enacted. Unfortunately, I believe you have fallen into their trap by excluding from consideration in your estimate of potential lawsuits what will be the overwhelmingly most frequently named defendant—Cuba itself.⁴ Fourth, the newly-added \$50,000 "amount in controversy" requirement of Title III will not greatly restrict Section 302 lawsuits, as your letter suggests it will.

To elaborate on my last point first, the figure of \$50,000 in controversy requirement of Title III relates to the value of the property that is being "trafficked" in; e.g., that is being, among other things, "used ... or profited from" Under Title III each trafficker must pay, in damages, the "fair market value" of the property being trafficked in to anyone who "owns a claim" to that property. (See, Section 302(a)(i)). A property—as will be demonstrated in a moment—that was worth as little as \$3,500 in 1960 will today meet the bill's requirement of \$50,000 in controversy. This is the case because, in calculating whether a given property has a value of \$50,000 or more for the purposes of Title III, the following things are included: (1) Interest is added from the time of property loss and compounded annually. (See,

Footnotes at end of article.

Section 302(a)(1)(B)). If only 6% interest is applied to Title III court judgments (as was the case in Foreign Claims Settlement Commission decisions relating to Cuba) the compounded interest component alone, over a period of 35 years, increases the value of the property by 500%. Therefore a property with a value of \$3,500 in 1960 equals an "amount in controversy" of \$17,500 today. (2) Title III allows for the virtually automatic trebling of the value of any previously determined "sum" (to reiterate, interest is specifically included in determining the "sum" to be trebled). For such trebling to occur Section 302(a)(3) merely requires that a "trafficker" be given notice twice of an "intention to institute suit" before that trafficker becomes liable for "triple the amount determined" under 302(a)(ii). In filing suit a plaintiff will allege in his complaint that requisite notices were given and ignored and, therefore, that the amount of damages sought (i.e. the "amount in controversy") is the value of the property trebled. All of this means that a property with a 1960 value of \$3,500 has, with compounded annual interest at 6%, become worth \$17,500; when that figure is trebled it becomes \$52,500 and comfortably meets Section 302(b)'s requirement of a "matter in controversy [that] exceeds the sum or value of \$50,000."⁵

To return to the issue of the actual number of lawsuits the LIBERTAD bill is likely to engender if it becomes law, a Department of the Army publication reports that some 800,000 Cubans settled in the United States between January 1, 1959 and September 30, 1980. (See, "Cuba, A Country Study" (1985) at pg. 69-70, citing a National Research Council study). If we assume that a further 10,000-12,000 Cubans have entered the U.S. annually in the past 15 years, a total of 1 million Cubans have taken up residence in the U.S. since Fidel Castro came to power. The question put to CBO was, in essence: How many of these Cuban Americans may be expected to file suit with respect to "claimed" properties in Cuba if Section 302 is enacted? To further distill the question, it may be restated as: How many damage suits will be brought with respect to Cuban properties that were worth at least \$3,500 in 1960?

In the first place, many of the hundreds of thousands of Cubans who suffered property losses in Cuba have died in the intervening 30-35 years.⁶ Accordingly, any "claims" relative to properties located in Cuba that might be asserted in a Section 302 lawsuit, as likely as not, will be filed by the children and even grandchildren of the now deceased former owners. The broad definition given the word "property" (i.e. "future or contingent right . . . or other [property] interest") at Section 4(11) of the bill ensures such a result.⁷ This fact alone will greatly increase the number of suits relative to any one Cuban property that may be expected under Section 302 of the LIBERTAD bill. (According to the same Department of the Army study quoted in the preceding paragraph, in 1958 the Cuban total fertility rate—i.e. the average number of children born to each woman—was 3.8. This gives us a sense of the number of descendants likely to assert a claim to any one decedent's former properties in Cuba).

Second, many of the properties in Cuba that will be the subject of Section 302 lawsuits had multiple ownership interests. Again, Section 4(11)(A) defines "property" as including any property ". . . whether real, personal, or mixed, or any present, future, or contingent right, security, or other interest therein, including any leasehold interest." Therefore, in the agricultural sector for example we can expect claims to be filed by the descendants of not only the owners of the property but also descendants of those who

produced commodities from the land under various colono arrangements, or those who held leasehold, mortgage or other interests in the confiscated property. The same is true of the service and industrial sectors of the Cuban economy. This greatly expands the number of suits to be expected if Title III of the LIBERTAD bill becomes law. (By the way, your letter of July 24 misstates the intent of Title III when your projected figure of 15,000 possible litigants are described in terms of having had "commercial property confiscated in Cuba"; thereby creating the erroneous impression that only such properties are subject to suit. The requirement of the statute is not that the property have been "commercial"—under Section 4(9)(A)'s definition it can have been real or personal property, or any other type of property interest for that matter. The test for commencing litigation is whether the subject property is being used at the time of suit "in the conduct of a commercial activity." (See Section 302(a)(1). Therefore an originally non-commercial property (a residence, for instance) that is now being used in whole or perhaps even in part in a commercial vein such as, as a bicycle repair shop, or a hairdressers, or as business or professional offices, would be subject to suit under Section 302. In short, residential properties are exempt from suit under the LIBERTAD bill only to the extent that they are being, "used for residential purposes." (See, Section 304(11)(B). I will return to the issue of residential properties later in this letter).

In any event, even if we set aside for a moment the multiplicity of litigants and property interests that will assert themselves with respect to any one property, how many actual properties in Cuba may be subject to suit if Title III is enacted? The truth is, no one really knows for certain—but some informed estimates can be made.

In 1959 when the first departures for the U.S. from Cuba began, that country had a population of approximately 6.5 million. We can begin our analysis of potential lawsuits to be expected under Title III by first considering the number of various service establishments that may have existed in pre-revolutionary Cuba to serve a population of that size. (Examples of such service establishments would include restaurants; hotels; clothing shops; bars; groceries; dry goods stores; abattoirs and butchers; barbers and hairdressers; automobile service stations, distributors and parts suppliers; appliance shops; construction companies and building materials suppliers; shoeshops; hardware and feed stores; farm provisioners; laundries; touristic enterprises ranging from marinas and casinos, to nightclubs and theaters; department stores; bank branch offices; drug stores; clinics and professional office buildings used by doctors, dentists, accountants, architects, and lawyers—e.g., there were 7,858 attorneys in Cuba according to the 1953 census). If we arbitrarily—but certainly reasonably—assume that one of each type of service establishment existed per each 500 head of population, a total of approximately 12,000 such enterprises existed in each service category. We will assume, conservatively, that only 15 categories existed in pre-revolutionary Cuba. More than 15 such categories of course existed, but by limiting the number of categories we are able to correct our overall figure to allow for some service industries that had individual establishments (for example bank branches) at a rate of less than one per 500 head of population. When we multiply 12,000 service establishments times 15 categories of such establishments, we reach a total of 180,000. If as few as 1/3 of the owners of those establishments (again, a very conservative figure) settled in the U.S., a total of 60,000 service industry properties

are likely to be the subject of lawsuits in federal courts if the LIBERTAD bill is enacted.⁸ But, to reiterate an earlier point, each of these properties is capable of having multiple suites filed against it by the descendants of the original owners. If only two such descendant suits are brought on average with respect to each property, a total of 120,000 suits can be expected. Finally, if only one additional claim, on average, is brought by an individual alleging, for example, a leasehold, mortgage or security interest in each property, our total reaches a figure of 180,000 lawsuits to be expected from the Cuban service sector alone.

Turning to the Cuban industrial, manufacturing and transportation sectors, how many lawsuits might they engender? Again, it is difficult to know with any certainty. But, let us assume only 1,000 industrial, manufacturing and transportation properties in such representative enterprises as sugar production; tobacco manufacturing; fishing and seafood processing; rum distilling; brewing; steel making; cosmetic and toiletry manufacturing; mining; warehouses and freight lines; construction materials manufacturing; oil processing and distribution; meat packing; electronic goods and other durables manufacturing; and, finally, railroads, ferries and other modes of transportation. The lawsuits from this sector of the Cuba economy, it should be noted, will not be limited to the claims of the companies themselves. Section 4(11) of the LIBERTAD bill defines "property" to include any "security interest." Therefore, the shareholders in these industrial, manufacturing and transportation sectors of pre-revolutionary Cuba will be filing individual lawsuits if Title III is enacted. How many such lawsuits will be filed is really anyone's guess. But let us assume that each enterprise had even 100 shareholders now naturalized in the U.S. whose individual shareholdings were worth at least \$3500 thirty-five years ago. This means that a further 100,000 lawsuits may be expected—with again the fact that descendants of the original owners will be filing most of the suits ensuring that the figure of 100,000 is considerably enlarged.⁹

Then there are the lawsuits to be expected from Cuba's agricultural sector. Once again, it is difficult to quantify the number of such lawsuits—particularly when most agricultural properties had multiple interests encumbering them, such as colono and various other tenure and leasing arrangements. But if we pick a figure of at least 25,000 rural properties (out of a total of over 150,000 such properties¹⁰) whose owners emigrated to the U.S. and that had a value in 1960 of at least \$3,500, and if we then assume two overlapping property interests asserted with respect to each property (e.g., a fee simple and a colono interest) by an average of two descendants claiming such interests, we arrive at a figure of 100,000 lawsuits generated by Cuba's agricultural sector.

Finally, there are the lawsuits that will be brought with respect to properties that, although originally residential, are now being used, in the language of Section 302(a)(1), in "the conduct of a commercial activity" and therefore are not exempt from suit under Section 4(11)(B)'s exception for "real property used for residential purposes." (Emphasis added). Cuba has no modern office blocks to speak of and very few purpose-built service premises of any kind. Therefore a great many formerly residential buildings are now used as commercial, professional or governmental premises. (It will be recalled that agencies and instrumentalities of the government of Cuba may be sued if they are

using property in the conduct of a commercial activity). In any of those cases if the activity going on in the property is commercial in nature—that property is subject to suit under Title III. Given that whole sections of Havana that were formerly residential, such as Vedado and Miramar, are now being used in some form of commercial manner (even if only as a workshop or small restaurant (paladare) under recently liberalized self-employment laws) thousands of lawsuits may be expected from this quarter. In virtually every one of these cases the \$3,500 threshold (in 1960 values) will be comfortably met. We will very conservatively assume that only 25,000 residential properties will be the subject of suit if Title III is enacted.¹¹ If, as is predictable, an average of as little as two lawsuits (by either descendants' interests or mortgage, etc. interests) are brought with respect to each property, our final figure from this sector totals 50,000 federal court litigations.

To summarize, the number of lawsuits to be reasonably expected if the LIBERTAD bill becomes law include: 180,000 in the service sector, 100,000 in the industrial, manufacturing and transportation sector, 100,000 from the agricultural sector and 50,000 from residential properties that are now being used "in the conduct of a commercial activity"—for a total of 430,000 lawsuits. Using your letter's figure of \$4,500 in processing costs per lawsuit, 430,000 litigations will require the expenditure of \$1,935,000,000 (or nearly \$2 billion) by the federal government in court costs alone if Title III of the LIBERTAD bill is enacted.

As I have previously remarked, your letter says that, because of the newly-added \$50,000 amount in controversy requirement of Title III, "CBO expects that the number of additional claims [i.e. from Cuban Americans] would be quite small." I have tried to demonstrate that the figure of \$50,000 is illusory because the threshold amount can be met, within the terms of the proposed statute, by demonstrating that the property at issue was worth as little as \$3,500 in 1960. But there is a second point I wish to make in this regard, that is, I believe your letter reveals a misplaced trust in the self-policing character of the American litigation system. In the case of the \$50,000 amount in controversy requirement of Title III; (i) it will quickly become known by potential plaintiffs that they need only show a property value of \$3,500 in 1960 in order to qualify to file suit, and (ii) even if there is a doubt as to whether a property interest was worth \$3500, isn't it predictable that many people will go ahead and aver that, at least upon information and belief, the \$50,000 amount in controversy requirement has been met and let the court resolve whether or not it really has? (Although upon what controverting evidence a court would be able to dismiss a claim as monetarily insufficient is unclear). In essence, I suppose I question your basic assumption that an "amount in controversy" requirement of a statute can ever realistically be expected to dissuade potential litigants from commencing suit. This is particularly so with Title III of the LIBERTAD bill, which is overtly about an unprecedented use of the U.S. civil justice system to promote certain foreign policy objectives with respect to a particular country. Can we as a nation claim to be surprised when hundreds of thousands of Cuban Americans zealously (and quite patriotically in their view) file lawsuits against Cuban properties? Is something like an amount in controversy requirement of a U.S. statute really going to much dampen the litigious excitement the LIBERTAD bill will ignite in south Florida?

It is worth reiteration that all a plaintiff must show to receive a judgment against

Cuba and other "traffickers" under Title III is, (i) ownership of a "claim" to property, and (ii) that the property is being used in a commercial manner by the government of Cuba or a private company or individual. As far as establishing the value of properties being "trafficked" in (in order that litigants may receive that sum as "damages"), we may trust that a body of experts will develop in Florida to provide appraisal evidence as to property values in pre-revolutionary Cuba. And, as is the nature of most experts, they may be expected to assess the value of properties in a way that is agreeable to the plaintiffs' lawyers who seek and retain their services and who are probably bringing the case on a not disinterested contingency fee basis. In short, it will be a very rare property that is not confidently asserted to have a value well in excess of the amount in controversy requirement of Title III.

For all of the reasons set out above, there can be little doubt that if Congress passes Title III it will produce a litigation explosion of a magnitude never before seen in this country.¹² I genuinely believe you could not be more wrong in your July 31 opinion that the "claims [of Cuban Americans] will be quite small and that additional costs to process these claims [will] not be significant." I have tried in this letter to explain and demonstrate the basis of my belief. No claim is made that the estimates appearing in this letter are beyond reasoned dispute from either direction. For example, it may be the case that service establishments existed in Cuba, on average, at the rate of one per 1,000 head of population rather than one per 500, as argued earlier in this letter. If so, that would reduce the number of service sector lawsuits by half, to a total of 90,000. As a result, the final figure of lawsuits to be expected would be 340,000 instead of 430,000. On the other hand, we could probably easily double the estimate of 50,000 lawsuits expected to arise from Cuba's residential property sector—with more such suits to come with each liberalizing economic step of the Cuban government that allows broader scope for self-employment and small business formation. The point is, thoughtful adjustments can and should be made to the total number of lawsuits projected to be ultimately engendered by Title III of the LIBERTAD bill. However, I think it highly credible that the number of lawsuits to be expected must be in the range of 300,000 to 450,000—as large as these figures may seem, there is a logic to their calculation.

On a final point, Section 303(a)(2) of the LIBERTAD bill provides that "... a court may appoint a Special Master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of claims to ownership (sic) of confiscated property by the Government of Cuba." This provision of Title III leads you to remark in your July 31 letter that: "The Foreign Claims Settlement Commission could incur additional costs because it could be asked to assist the courts in reviewing cases. CBO estimates that the Commission will require several new attorneys and support personnel (sic) to fulfill this responsibility, with costs up to about \$1 million each year." In assessing your estimate that "several new attorneys" will be required by the Foreign Claims Settlement Commission to determine ownership and value of claims against Cuba it is instructive to consider that that is precisely what the Commission did in the Cuba claims program. In an approximately six-year period between 1965 and 1972, 5,911 claims of U.S. nationals were certified against Cuba—a further 2,905 were denied—making a total of 8,816 claims actually decided, producing a rate of decision of about 1,500 per year. Apparently there were ten at-

torneys at the Commission who handled the claims against Cuba. Their rate of decision was therefore approximately 150 per year. If Title III produces 400,000 claims from Cuban Americans, the Commission, if it is to determine the ownership and value of these claims over a four year period, will need to employ 665 attorneys if a rate of determination equal to that of the Cuban claims program is to be achieved.¹³ If the costs of salaried, accommodating and otherwise supporting these attorneys is as little as \$100,000 each per year, the cost to the federal government will reach nearly \$250 million over a four year period in simply reading cases for further disposition by the federal courts.

Again, I make no claim of disputability for either my methodology or its ultimate conclusions in this attempt to estimate the number of lawsuits S. 381 may be expected to engender. My purpose in writing has been achieved if the various points raised in this letter prompt a reconsideration by your Office of the litigation implications—and the serious consequential harm to certified claimants such litigation will cause—if Title III of the LIBERTAD bill is enacted in its present form.

Yours sincerely,

ROBERT L. MUSE.

FOOTNOTES

¹The requirement that a claimant be a U.S. national at the time of property loss appears at Section 503(a) of the Cuban Claims Act (22 U.S.C. Section 1643(b)). This statutory requirement bespeaks the adherence by the U.S. to a long-settled principle of international law. See, e.g. Claim No. IT-10,252, Decision No. IT-62, reprinted in 8 Department of State, DIGEST OF INTERNATIONAL LAW, 1236: "The principle of international law that eligibility for compensation requires American nationality at the time of loss is so widely understood and universally accepted that citation of authority is scarcely necessary . . ." The proposed lawsuit provisions of Title III of course would grossly violate that principle of international law.

²The Department of State has said that Cuban American claims against Cuba could be worth nearly \$95 billion. (See, letter of April 28, 1995 from Wendy R. Sherman, Assistant Secretary, Legislative Affairs, to Chairman Benjamin Gilman of the House Committee on Foreign Relations). To put that figure in perspective, according to a recent Economist Intelligence Unit report on Cuba, that country's Gross Domestic Product in 1994 was 12.8 billion pesos. The official rate of exchange is one peso to one dollar, but the more revealing black market rate has fluctuated between 100 to 25 pesos per dollar over the past year.

³Title III's definition of "trafficking" is sufficiently expansive to cover any involvement whatever by the government of Cuba in "claimed" properties. "Traffics" includes: "sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property [or] engages in a commercial activity using or otherwise benefiting from a confiscated property . . ."

⁴Section 302(a)(1) provides that: "... any person or entity, including any agency or instrumentality of a foreign state [i.e. Cuba] in the conduct of a commercial activity, that . . . traffics in property which was confiscated by the Government of Cuba on or after January 1, 1959 shall be liable to the United States national who owns a claim to such property for money damages . . ." (Emphasis added). It has been said that your Office is of the view that few suits will be brought against Cuba "because it doesn't have any assets in this country." With all respect, the same reasoning applied to the various Foreign Claims Settlement Commission programs conducted over the years would mean that no one would bother to file claims pursuant to those programs, because rarely does an expropriating nation have significant assets in the U.S. In fact claims are indeed filed under these programs, as it attested to by the 5,911 claims certified against Cuba. The reason those claims were filed was not to recover Cuban assets in this country (there were virtually none here by the time the program commenced), but rather it was to enlist the support of the United States in the bilateral resolution with Cuba of the matter

of the American claimants' property losses. Title III lawsuits, it should be remembered, are specifically made nondismissible under Section 302(g)(2). As a set of federal court judgments these Title III suits will come to constitute a future bilateral issue between the United States and Cuba of no less significance than the claims certified against that country by the Foreign Claims Settlement Commission. Indeed, unlike a certified claim, a court judgment carries with it rights of execution and attachment against any assets of the debtor nation that may be found now or in future within the United States. Therefore a government-to-government resolution of such outstanding judgments will prove a future practical necessity. In sum, Cuban Americans would be silly not to file individual Title III suits that they have every reason to believe will force themselves onto the prospective bilateral normalization agenda of the U.S. and Cuba.

⁵When this letter addresses various sectors of the pre-revolutionary Cuban economy that are likely to engender Title III property claims, I think it helpful to keep in mind that Cuba was a comparatively affluent country in 1959. Therefore, properties with a value of at least \$3,500 were no rarity. See, for example, the *Blue Ribbon Commission Report on the Economic Reconstruction of Cuba*, 1991, prepared by the Cuban American National Foundation, which says at pg. 9: "Before Castro's rise to power on 1 January, 1959, Cuba ranked among the best credit risks and business partners in the Western Hemisphere . . . Butressed by Cuba's liberal foreign investment laws . . . Cuba's national income doubled between 1945 and 1958. Cuba's per capita Gross National Product ranked third among Latin American nations in 1953, behind Argentina and Venezuela." See also the testimony given to the Trade Subcommittee of the Ways and Means Committee on June 30, 1995 by Congresswoman Ilena Ros-Lehtinen: "Its fertile land, vast tracks of tourist beaches and resorts, and its geographical location, led Cuba to become one of the most developed countries in the hemisphere." In any case, whatever the general level of prosperity may have been in pre-revolutionary Cuba, those who were of the Cuban upper economic echelons came to the United States in highly disproportionate numbers, leaving, of course, disproportionately valuable properties behind in Cuba. This issue will be discussed in greater detail at a later point in this letter.

⁶The life expectancy of Cubans was 64 years in 1960, by late 1984 it had increased to 73.5 years. Even if the latter figure is used a Cuban who was as young as 38½ years old in 1960 is, as a purely actuarial matter, dead today.

⁷Ordinarily the laws of the place of death of the testator (in most Title III cases this will be Florida) will determine inheritance rights. For example, a Florida will provision that says no more than the "remainder of my property shall be divided among my children" would give each heir a cause of action against Cuba under Section 302. Specific bequests and intestacy would carry similar rights of action by inheritance. Interestingly enough Section 303 of the LIBERTAD bill provides that: "In determining ownership, courts shall not accept as conclusive evidence of ownership any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries [e.g., Cuba] . . ." Therefore, a decedent's actual ownership of a bequeathed Cuban property is statutorily exempted from judicial inquiry.

⁸Assuming that ⅓ of the owners of service establishments settled in the U.S. is not at all unreasonable when it is recalled that those arriving in this country in the aftermath of the Cuban revolution were of the middle and upper strata of Cuban society, i.e., the property-owning class of that country. Given the affluence of the Cubans who settled in the U.S. it is also highly likely that the properties they left behind were, in almost all cases, worth at least \$53,500 at the time of confiscation. Of Cuba's population in 1958, 22% (or 1.3 million individuals) were of the upper and middle economic strata. (See, Thomas, *Cuba: The Pursuit of Freedom* (1971) at pg. 1110 where a UNESCO study to that effect is cited). It was precisely that strata of Cuban society that departed for the U.S. in the early 1960's and may be expected to file Title III lawsuits. For example, Cubans emigrating to the United States in the years 1959-62 were four times more likely to have been of the professional, semiprofessional and managerial classes than the general Cuban population. (See, Perez, *Cuba: Between Reform and Revolution* (1988), at pg. 344. The question is therefore not what the value of the average property in Cuba was in 1960, but, rather, what was the average value of the properties left behind in the early 1960's by the highest socioeconomic strata of that country's population.

⁹Cuban corporate claims themselves present an interesting picture under Title III by virtue of Section

4(14) of the LIBERTAD bill which defines "United States national" as "an legal entity organized under the laws of the United States, or of any state . . . and which has its principal place of business in the United States." In short, there is no requirement that the company actually be owned by U.S. citizens. (In order to qualify as a U.S. national for the purposes of the Cuban Claims Act a corporation had to be 50% or more owned by U.S. citizens. Yet again, Title III departs from international law and abandons the sensible and long-established requirement that a company demonstrate some real connection with the country of its purported nationality). Section 4(14) quite simply means that Cuban exiles in such places as Spain, Venezuela, Mexico, and Costa Rica (or Cubans in the U.S., for that matter, who have not sought U.S. citizenship) need only organize a "legal entity"—i.e. form a corporation in the U.S. and transfer any "claim" they may have against Cuba to that corporation in order to file a Section 302 lawsuit, the filing and prosecution of which will constitute the principal business of the newly-formed U.S. corporation. There is no way of estimating the number of lawsuits this distinctly odd and suspect provision of Title III will engender.

¹⁰See Perez, *Cuba: Between Reform and Revolution* (1988) at pg. 302, where the author refers to a 1946 study that gives the total number of farms in Cuba at the time as 159,958, of which over 95,000 were of at least 25 acres and, in most cases, were considerably larger.

¹¹This figure of 25,000 is arbitrarily selected from the total of over 150,000 housing units abandoned in Cuba when their owners left for the U.S. (See Jorge Dominguez, *Cuba since 1959*, at pg. 124 in CUBA, A SHORT HISTORY (1993) where the author says that from 1959 to 1975 approximately 9,300 housing units in Cuba were abandoned annually as a consequence of emigration. Sociedad Economica de London gives a figure of 139,256 housing units "vacated by emigration between 1960 and 1974." See, *Private Property Rights in Cuba: Housing* (1991).

¹²I am at a loss to recall any statute that upon enactment was capable of immediately generating several hundred thousand lawsuits. Even statutes with a potentially large pool of plaintiffs—for example, various anti-discrimination laws—are mitigated in their impact upon the courts by the fact that they are not retroactive in application. Title III is by contrast distinctly retroactive in its application, in that it provides non-U.S. nationals at time of injury with an *ex post facto* cause of action for injuries occurring, for the most part, over 30 years ago.

¹³In the case of Cuban American Title III claims it may be unrealistic to assume a rate of determination as rapid as that which occurred with respect U.S. nationals' claims. The claims that will be filed by Cuban Americans can be expected in many, if not most cases, to be thinly documented (if documented at all) as a result of circumstances of the claimants' departures from Cuba and the passage of time. See, Edward D. Re, *The Foreign Claims Settlement Commission and Cuba Claims Program*, 1 International Lawyer 81 at pg. 85 (1966): "Past programs have shown that long delays in the initiation of claims programs increase the burden of adjudication. Due to the destruction of records and the unavailability of witnesses, many claims have found difficult substantiate. This is particularly important since Commission Regulation require that claimants 'shall have the burden of proof on all issues involved in the determination of his claim.' The difficulties are increased where there has been lack of cooperation or access in the foreign country". It may be assumed the Mr. Re, as a former Chairman of Foreign Claims Settlement Commission, knew what he was talking about. In any event, much of the evidence of ownership and value that Cuban Americans can be expected to present will, of necessity, be testimonial in nature and based largely upon memory and hearsay. It follows that the evaluation of such claims by the Commission under Section 303(a)(2) will prove an exceedingly laborious, time consuming and imperfect process. Ironically, President Johnson remarked, when signing the Cuban Claims Act in 1964 ". . . the importance of making a permanent record which evidence and witnesses are still available." 51 Dept. State Bull. 674(1964). Section 303 proposes, of course, to attempt to create such a record by the Commission, for use in federal lawsuits by naturalized Cuban Americans, fully thirty-one years after President Johnson's remarks.

Mr. DODD. Interestingly, my colleagues and the authors of this bill will say those estimates are way too high, and they will say there will not be that many claimants.

I point out to my colleagues that in an earlier version of the Senate bill,

section 301(5)(B)(ii) of that bill specifically makes the point, "Since Fidel Castro captured power in 1959, through his personal despotism he has confiscated the properties of hundreds of thousands of Cubans who claim asylum in the United States as refugees because of political persecution."

I do not argue with that statement at all. I endorse it. The point is you cannot on the one hand claim there will be very few people come forward and simultaneously point out about the hundreds of thousands of people who have legitimate claims against the Cuban Government. I stand by the figure of some 400,000 claims that may result from this change in law.

However, my colleague from North Carolina and supporters now seem to have had a change of heart, as I pointed out, and assert that the number of claims will be minuscule. Their message to us "we did not mean it when we said the Cuban Government confiscated the properties of hundreds of thousands of Cuban immigrants. Do not worry about the legislation burdening U.S. courts."

I suggest that is a high-risk position to take in light of the tremendous costs we could be inflicting on ourselves as a result of this legislation.

Mr. President, the way this measure is drafted, as I pointed out earlier, any potential claimants would be foolish not to file a claim in United States courts because once a democratic government has been established in Cuba the right to instigate new suits, will be terminated. So you have to do it quickly if this bill becomes law. I suspect that many will step forward and seek to do just that.

It seems to me before we move ahead to impose a new mandate in our courts we better understand the extent of the burden we are imposing and how we intend to pay for it. Otherwise we are simply imposing one more unfunded mandate on our economy. This time, in our Federal courts.

As has been pointed out several times today, there are currently 5,911 United States claims—that is claims of individuals who were citizens of the United States at the time of the expropriation, with certified claims against the Government of Cuba.

Under international law, Mr. President, as well as United States law and practice, the United States Government has an obligation to espouse these claims with Cuban authorities. It will do so at the appropriate time with a Government of Cuba that is prepared to accept its responsibilities under international law.

This legislation provides for lawsuits not only against the Government of Cuba but also other governments, foreign nationals, and corporations. I think it is terribly naive to think that other governments are going to sit back and do nothing while their citizens are being sued in U.S. courts for acts that are perfectly legal in their own country.

The World Trade Organization has already warned that provisions of this bill may violate international trade rules. I submit, Mr. President, and ask unanimous consent to have printed in the RECORD an article that that may be the case.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WTO STATES SUPPORT CUBA OVER U.S.
EMBARGO PLAN

GENEVA, July 11.—Cuba won support from other members of the World Trade Organisation on Tuesday for a warning that proposed U.S. legislation extending its embargo against Havana would violate the rules of the new body.

Diplomats said the European Union as well as Mexico, Washington's partner in the North American Free Trade Association (NAFTA), and Colombia voiced concern over the pending bill in the United States Congress.

A Cuban trade official, M. Marciota, told the WTO General Council his government was raising the issue "in an attempt to prevent this latest violation of the rules of the international trading system from being enacted."

He called for a "clear and vigorous statement" from the WTO warning both the U.S. administration and Congress "of the legal monstrosity which enactment of this bill would represent."

The measure, introduced by anti-communist Republican senator Jesse Helms, would tighten the 35-year-old embargo by banning the import into the United States of sugar, molasses and syrup from countries which import these products from Cuba.

It would also prohibit the granting of U.S. entry visas for people who have invested in properties nationalised under the communist administration of President Fidel Castro since it came to power in 1959.

The EU has already told Washington it might take a case to the WTO, launched on January 1 under the new world trade treaty signed last year, to protect its rights if the bill went through.

On Tuesday EU ambassador Jean-Pierre Leng told the General Council, the WTO's ruling body, that Brussels had considerable doubts on whether the measures envisaged by the bill's backers were compatible with the trade watchdog's rules.

The issue came to the WTO as other Latin American countries are increasingly ignoring U.S. policies aimed at isolating the communist island, suffering severe economic hardship following the collapse of its long-time ally, the Soviet Union.

Over the past three or four years, Cuba has built up new trade links with most countries in Latin America and begun a cautious switch to market economics including opening up its industrial sector to foreign investment.

Under the rules of the WTO, and its predecessor the General Agreement on Tariffs and Trade, members are allowed to declare trade embargoes if they perceive a threat to their national sovereignty.

The United States has justified its stance against Cuba on these grounds, but many WTO members argue there can be no serious grounds for insisting that Cuba presents such a threat to the United States in the post-Cold War period.

Mr. DODD. Furthermore, I am sure all of my colleagues have received letters and phone calls from Canadian, British, European Union, Mexican Government officials and others, objecting

to the legislation as an infringement on their sovereignty and as interfering with their trade relations. Canada and Mexico have both argued that the measure would violate the NAFTA legislation.

This bill is bad for U.S. business. Again, I would not make that the sole criterion, but, please think about what we are doing before we charge ahead here and have tremendous implications that will take some time to undo.

It undercuts efforts by the current administration, and previous ones, to ensure that U.S. investors can expect a stable and predictable environment when they seek to do business abroad. We can hardly insist that our trading partners respect international laws in areas of trade and investment when we ourselves are violating them. You cannot do business that way.

This legislation, if enacted, would disrupt international commercial relations to a significant degree. Under provisions of this bill the United States, in effect, expands its own right to sue in an area of law where we have heretofore studiously defended international law and practice. Having done so, how are we then going to defend the interests of American businesses abroad when a particular government decides that it no longer finds it convenient to follow international law? That would be a tragedy, a mistake.

If, in reaction to this legislation, other nations respond with special interest domestic legislation of their own, U.S. companies could be open to lawsuits throughout the world. Under those circumstances we would be in a very poor position, a very poor one indeed, having enacted this bill, to turn around and defend U.S. interests against a foreign government simply reacting to their own domestic, particular, special interest concerns.

Ironically, this legislation will also thwart the economic reform efforts that have slowly begun in Cuba—privatization, for example. I think all of us believe that the more we can secure privatization in Cuba, the better the results will be. Yet this measure would seriously undermine these efforts by targeting the very interests that are privatizing in Cuba. In effect we say to them, if you continue to undertake certain business activities then we are going to come after you.

You cannot, on the one hand, say we ought to encourage privatization, urge the international community to move in that direction, and then penalize the very elements that are doing it. Yet that is exactly what we will be doing if we enact this bill into law. It does not make any sense, Mr. President.

In fact the House-passed bill would even thwart privatization of the agricultural sector. Cuban farmers, availing themselves of the newly legalized private farmers markets, would be subject to suit in the United States because their produce or livestock may have been raised on confiscated property.

While I believe this legislation damages U.S. interests in all the ways I have just mentioned, I am also of the view it is unlikely to promote democratic or peaceful change in Cuba.

Do we get support in the United Nations for our Cuban policy? Only one country, one, joined the United States recently in voting against a U.N. resolution condemning the U.S. embargo. The one country that voted with us was Israel. Yet, business people from even Israel are doing business in Cuba today. They vote with us in the United Nations, the one vote we get, yet that country now is going to be the subject of the very law we are passing because, if Israel continues to do business in Cuba, Israelis are not going to be able to do business in this country, if their business activities in any way relate to confiscated properties.

Please, read this bill. This is not sound legislation. This is emotion speaking here. It is anger, it is frustration over what has happened in Cuba. But it is not sound thinking at all.

So, again I point out, one country joins us. The entire world votes against us on this issue. The one country that joins us, Israel, a good friend and loyal ally that always supports us in these things, is doing its own business in Cuba. It is one of the 58 countries today doing business in Cuba.

By the way, the countries doing business in Cuba are not all liberal, communist governments. The John Major government of Great Britain, is that some liberal, left wing government? The Government of France today under Chirac, the Government of Germany, are these all bad, rotten, no good characters? Are we now going to subject them to the provisions of this law? That does not make any sense. That is not the way to achieve the desired results that we would all like to see here.

Does anyone seriously believe this bill, if adopted, is likely to persuade other governments to adopt a policy of tightening this embargo and isolating Cuba diplomatically? How long have we heard those speeches? Non-U.S. trade and investment in Cuba have been expanding in recent months, not contracting. Regrettably, I would say, in many ways. But the facts of life are that is what is happening.

According to recent statistics released by the United States-Cuba Trade and Economic Council, businesses from 58 nations have formed more than 200 joint ventures in order to exploit business opportunities in Cuba. With the recent liberalization of Cuba's foreign investment laws, it will be even easier for foreign companies to set up shop in Havana.

Under the recent liberalization of Cuba's investment law, foreign investors will be able to wholly own their investments in most sectors of the Cuban economy.

Again, I am not suggesting in any way this ought to be some reason to start applauding Fidel Castro. I do not at all. I am just stating a fact. That is

what is happening. So the idea we are going to get others to join us in these particular moves is not likely. Australia, Austria, Brazil, Canada, Chile, Colombia, Ecuador, China, the Dominican Republic, France, Germany, Greece, Holland, Honduras, Hong Kong, Israel, Italy—the list goes on. In fact, I ask unanimous consent to print in the RECORD all the countries and their companies that are doing business there. Some of these companies come from our strongest allies in the world.

There being no objection, the list was ordered to be printed in the Record, as follows:

[From the U.S.-Cuba Trade and Economic Council, Inc.]

NON-UNITED STATES COMPANIES AND THE
REPUBLIC OF CUBA

Corporations and companies cited in the international media as having commercial activities with the Republic of Cuba.

AUSTRALIA

Western Mining Corp.

AUSTRIA

Rogner Group (tourism).

BRAZIL

Andrade Gutierrez Perforacao (oil).
Coco Heavy Equipment Factory (sugar).
Petrobras S.A. (oil).

CANADA

Advanced Laboratories (manufacturing).
Anglers Petroleum International.
Bow Valley Industries Ltd. (oil).
Canada Northwest Energy Ltd. (oil).
Caribgold Resources Inc. (mining).
Commonwealth Hospitality Ltd. (tourism).
Delta Hotels (tourism).
Extel Financial Ltd.
Fermount Resources Inc. (oil).
Fortuna Petroleum.
Fracmaster (oil).
Globafon.
Havana House Cigar and Tobacco Ltd.
Heath and Sherwood (oil).
Hola Cuba.
Holmer Gold Mines.
Inco Ltd. (mining).
Joutel Resources (mining).
LaBatt International Breweries.
Marine Atlantic Consultant (shipping).
MacDonalds Mines Exploration.
Metal Mining.
Mill City Gold Mining Corp.
Miramar Mining Corp. (Minera Mantua).
Pizza Nova (tourism).
Realstar Group (tourism).
Republic Goldfields.
Seintres-Caribe (mining).
Sherrit Inc. (mining).
Talisman Energy Inc.
Teck (mining).
Toronto Communications.
Val d'Or (mining).
Wings of the World (tourism).

CHILE

Dolphin Shoes (clothing).
Ingelco S.A. (citrus).
Latinexim (food/tourism).
New World Fruit.
Pole S.A. (citrus).
Santa Ana (food/tourism).
Santa Cruz Real Estate (tourism).

COLOMBIA

SAM (an Avianca Co.) (tourism).
Intercontinental Airlines.
Representaciones Agudelo (sporting goods).

ECUADOR

Caney Corp. (rum).

CHINA

Neuke (manufacturing).

Union de Componentes Industrials Cuba-China.

DOMINICAN REPUBLIC

Import-Export SA (manufacturing).
Meridiano (tourism).

FRANCE

Accord (tourism).
Alcatel (telecommunications).
Babcock (machinery).
Bourgoin (oil).
Compagnie Europeene des Petroles (oil).
Devexport (machinery).
Fives Lille (Machinery).
Geopetrol.
Geoservice.
Jetalson (construction).
Maxims (cigars-owned by Pierre Cardin).
OFD (oil).
OM (tourism).
Pernod Ricard Group (beverages/tourism).
Pierre Cardin.
Pompes Guinard (machinery).
Societe Nationale des Tabacs (Seita) (tobacco).
Sucre et Donrees (sugar).
Thompson (air transport).
Total (oil).
Tour Mont Royal (tourism).

GERMANY

Condor Airlines (charters for Lufthansa).
LTU (LTI in Cuba) (tourism).

GREECE

Lola Fruits (citrus).

HOLLAND

Curacao Drydock Company (shipping).
Golden Tulips (tourism).
ING (banking).
Niref (minerals).

HONDURAS

Facuss Foods.

HONG KONG

Pacific Cigar.

ISRAEL

GBM (citrus).
Tropical (manufacturing).
World Textile Corp. S.A.

ITALY

Benetton (textiles).
Fratelli Cosulich (gambling).
Going (tourism).
Italcable (telecommunications).
Italturis (tourism).
Viaggio di Ventaglio (tourism).

JAMAICA

Caricom Investments Ltd. (construction).
Craicom Traders (Int'l mrktg of Cuban products).
Intercarib (tourism).
Superclubs (tourism).

JAPAN

Mitsubishi (auto/tourism).
Nissan Motor Corp. (auto).
Nissho Iwai Corp. (sugar).
Toyota.
Sumitomo Trading Corp. (auto).
Suzuki Motor Corp. (auto).

MEXICO

Aero-Caribe (subsidiary of Mexicana de Aviacion).
Bufete Industrial.
Cemex (construction).
Cubacel Enterprises (telecommunications).
Del Valle (manufacturing).
Domeq (export—rum).
DSC Consortium (tourism).
Grupo Doms (telecommunications).
Grupo Industrial Danta (textiles).
Grupo Infra de Gases.
Incorporacion International Comercial (beer).
Industrias Unidas de Telefonía de Larga Distancia.

La Magdalena Cardboard Co.
Mexpetrol (oil).
Pemex.
Bancomex.
Mexican Petroleum Institute.
Protexa.
Bufete Industrial.
Ingineiros Civiles Asociados.
Equipos Petroleos Nacionales.
Telecomunicaciones de Mexico.
Vitro SA (manufacturing).

PANAMA

Bambi Trading.

SOUTH AFRICA

Anglo-American Corp. (mining).
Amsa (mining).
De Beers Centenary (mining).
Minorco (mining).
Sanachan (fertilizers).

SPAIN

Caball de Basto S.L.
Camacho (manufacturing).
Consorcio de Fabricantes Espanoles, Cofesa.
Corporacion Interinsular Hispana S.A. (tourism).
Esfera 2000 (tourism).
Gal (manufacturing).
Guitart Hotels S.A.
Grupo Hotelero Sol.
Hialsa Casamadrid Group.
Iberia Travel.
Iberostar S.A. (tourism).
Kawama Caribbean Hotels.
K.P. Winter Espanola (tourism).
Miesa SA (energy).
National Engineering and Technology Inc.
Nueva Compania de Indias S.A.
P&I Hotels.
Raytur Hoteles.
Sol Melia (tourism).
Tabacalera S.A. (tobacco).
Tintas Gyr SA (ink manufacturer).
Tryp (tourism).
Tubos Reunidos Bilbao (manufacturing).
Vegas de la Reina (wine imports).

SWEDEN

Foress (paper).
Taurus Petroluem.

UNITED KINGDOM

Amersham (pharmaceuticals).
BETA Funds International.
Body Shop International (toiletries).
British Berneo PLC (oil).
Cable & wireless comm.
Castrol (oil).
ED&F Man (sugar).
Fisions (pharmaceuticals).
Glaxo (pharmaceuticals).
Goldcrop Premier Ltd. (manufacturing).
ICI Export (chemicals).
Ninecastle Overseas Ltd.
Premier Consolidated Oilfields.
Rothschild (investmant bank).
Simon Petroleum Technology.
Tate & Lyle (sugar).
Tour World (tourism).
Unilever (soap/detergent).
Welcomme (pharmaceuticals).

VENEZUELA

Cervecera Nacional.
Covencaucho.
Fiveca (paper).
Fotosilvestrie.
Gibraltar Trading (steel).
Grupo Corimon.
Grupo Quimico.
Ibrabal Trading.
Interlin.
Intesica.
Mamploca.
Mamusa.
Metalnez.
MM internacional.
Pequiven.

Plimero del Lago.
Proagro.
Sidor.
Venepal.
Venoco.

Mr. DODD. So, of course, as a result of the provisions in this bill and other regulations, we will be forced to sit on the sidelines here when the change begins to happen. And only after democracy comes to Cuba will we be able to fully engage with the new government down there. The requirements mandated by the House passed bill that must be met by the post-Castro government for it to be considered in transition to democracy and eligible for emergency humanitarian assistance are very stiff.

I ask unanimous consent that those requirements be printed at this particular point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SEC. 205. REQUIREMENTS FOR A TRANSITION GOVERNMENT.

For purposes of this Act, a transition government in Cuba is a government in Cuba which—

(1) is demonstrably in transition from communist totalitarian dictatorship to representative democracy;

(2) has recognized the right to independent political activity and association;

(3) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(4) has ceased any interference with Radio or Television Marti broadcasts;

(5) makes public commitments to and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) dissolving the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades;

(C) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(D) effectively guaranteeing the rights of free speech and freedom of the press;

(E) organizing free and fair elections for a new government—

(i) to be held in a timely manner within a period not to exceed 1 year after the transition government assumes power;

(ii) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(iii) to be concluded under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other elections monitors;

(F) assuring the right to private property;

(G) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(H) granting permits to privately owned telecommunications and media companies to operate in Cuba; and

(I) allowing the establishment of independent trade unions as set forth in conven-

tions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;

(6) does not include Fidel Castro or Raul Castro;

(7) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people;

(8) permits the deployment throughout Cuba of independent and unfettered international human rights monitors; and

(9) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States.

SEC. 206. REQUIREMENTS FOR A DEMOCRATICALLY ELECTED GOVERNMENT.

For purposes of this Act, a democratically elected government in Cuba, in addition to continuing to comply with the requirements of section 205, is a government in Cuba which—

(1) results from free and fair elections conducted under the supervision of internationally recognized observers;

(2) has permitted opposition parties ample time to organize and campaign for such elections, and has permitted full access to the media to all candidates in the elections;

(3) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(4) has made demonstrable progress in establishing an independent judiciary;

(5) is substantially moving toward a market-oriented economic system;

(6) is committed to making constitutional changes that would ensure regular free and fair elections that meet the requirements of paragraph (2); and

(7) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

Mr. DODD. I am not going to list all of these requirements now, but I ask my colleagues to read section 205 of the House bill. It is hard to disagree with any of these. But the idea that we specifically exclude certain people from even being elected in their own country as a requirement of that country being in transition to democracy seems to be getting to deeply into the nitty gritty of another country's affairs. I do not think anyone can read these requirements and think that they are realistic. To think that a country must meet absolutely meet every one of these requirements before we can even do business with the new government down there is preposterous.

Assuming we had a change in that country, any kind of change at all, I think we would want to engage that new government. But no, under provisions in the House bill we have to wait until all these conditions—they go on for a page and a half here—are met. If we had applied those standards to the transitions that took place in the former Soviet Union, in Poland, and elsewhere in Eastern and Central Europe, we might have missed real opportunities to make a difference for democracy. In fact, many of these Newly Independent States have yet to meet

all of the standards that we seek to impose on a post-Castro Cuba. If you applied the specifics to them today, for example, we have some people being elected in these countries that are former Communists—that would violate these standards. That does not make any sense. It is unrealistic and it is not a good idea. I wonder what would have happened in Poland, or in Russia, if we had applied the same kind of provisions of law.

Again, it is not just me speaking here. Last month the Inter-American Dialog issued its second report on Cuba. A number of very distinguished individuals were involved in crafting the report, Republicans as well as Democrats, and distinguished foreign policy experts. I will ask the list of these members be printed in the RECORD. But let me just read some. Among the participants were Elliot Richardson, Oscar Arias, former President of Costa Rica, John Whitehead, former Deputy Secretary of State in the Reagan administration—we are not talking about some liberal Democrats here, who wrote the report. Listen to what they have to say. I ask unanimous consent that the full list of the members of that group be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

MEMBERS OF THE INTER-AMERICAN DIALOGUE TASK FORCE ON CUBA

Elliot L. Richardson (Chair), Partner, Milbank, Tweed, Hadley and McCloy, Former U.S. Attorney General and Secretary of Defense.

Jorge I. Domínguez (Coordinator), Professor of Government, Harvard University.

Raúl Alfonsín, Former President of Argentina.

Oscar Arias, Former President of Costa Rica.

Peter D. Bell, President, Edna McConnell Clark Foundation, Co-Chair, Inter-American Dialogue.

Sergio Bitar, National Senator, Chile.

McGeorge Bundy, Scholar-in-Residence, Carnegie Corporation of New York, Former U.S. National Security Advisor.

Alejandro Foxley, President, Christian Democratic Party of Chile, Co-Chair, Inter-American Dialogue.

Peter Hakim, President, Inter-American Dialogue.

Ivan Head, Professor of Law, University of British Columbia, Canada.

Osvaldo Hurtado, Former President of Ecuador.

Abraham F. Lowenthal, President, Pacific Council on International Policy.

Jessica T. Mathews, Senior Fellow, Council on Foreign Relations, Columnist, The Washington Post.

Alberto Quirós Corradi, President, Seguros Panamericano, Venezuela.

Maurice Strong, Chairman, Ontario Hydro, Canada, Chairman, Earth Council.

Viron P. Vaky, Senior Fellow, Inter-American Dialogue, Former U.S. Assistant Secretary of State.

John Whitehead, Chairman, AEA Investors, Inc., Former U.S. Deputy Secretary of State.

Mr. DODD. The task force offered a number of recommendations to both the Cuban and United States Governments, designed to enhance the prospects for peaceful democratic change in

Cuba. Among other things, and I am quoting:

[It] urges the defeat of the Cuban Liberty and Democracy Solidarity Act.

I do not think John Whitehead, Elliot Richardson, or Oscar Arias, former President of Costa Rica, and a leading opponent in Central America against the Sandinista Government, are great friends or proponents of Fidel Castro. But they said this bill is a bad idea, a bad idea. Think twice before you do this.

Why is this bill bad? Because "It would injure and alienate ordinary Cubans, weaken Cuba's civil society—as threadbare as it may be—and retard Cuba's democratization. It would also reduce prospects for U.S. cooperation with other countries on Cuba."

I ask my colleagues to take a look at these recommendations, by this group of distinguished panelists who are bipartisan in nature.

I ask unanimous consent the report of the Inter-American Dialog Task Force be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

[The Second Report of the Inter-American Dialog Task Force on Cuba]

CUBA IN THE AMERICAS: BREAKING THE POLICY DEADLOCK

SUMMARY OF RECOMMENDATIONS

The prospects for change in Cuba are today greater than at any time since 1959. Yet, current U.S. policy neither encourages change in Cuba nor advances U.S. national interests. For their part, Cuban government policies continue to poorly serve the interests of the Cuban people. The unbending policies of the two countries—perpetuated by national pride on both sides—have allowed a continuing deterioration in Cuba's circumstances and increased the dangers of violent conflict. Our recommendations have one fundamental purpose: to enhance the prospects for peaceful, democratic change in Cuba.

To the Government of Cuba

We urge Cuba's leaders to put their claim of public support to the test of free and fair elections that are internationally monitored.

Political prisoners should be freed, and the laws that repress dissent and prevent the operation of independent organizations should be repealed.

Cuba should broaden its economic reform program and adopt policies necessary to qualify for membership in the World Bank and International Monetary Fund.

To the U.S. Government

U.S. policy toward Cuba should be redirected to the objectives put forth by the past two administrations—to encourage a peaceful transition to democracy in Cuba. Cuba no longer poses a security threat to the United States. The main danger to U.S. national interest in Cuba is the prospect of prolonged violence, which could provoke mass migration and U.S. military action.

U.S. interests in Cuba would be most advanced by pursuing three concrete goals:

To reduce hostility in U.S.-Cuban relations:

The United States should consistently make clear that it has no intention of invading Cuba. It should condemn violent actions by the exile groups, notify the Cuban government of U.S. military exercises near Cuba, and encourage military attachés throughout

the world to communicate with Cuban counterparts.

U.S. Cuba policy should give greater weight to humanitarian concerns by allowing charities to engage in all necessary financial transactions to advance their work, permitting Cuban-Americans again to aid relatives in Cuba, and lifting all restrictions on shipments of food and medicine.

Radio Marti should broadcast objective news, not propaganda, and should be politically independent. TV Marti should be canceled because it violates international conventions.

To encourage private markets, the rule of law, and independent organizations:

The U.S. government should exempt from its embargo all transactions that foster communications between the peoples of Cuba and the United States, specifically removing all obstacles to travel to Cuba and encouraging cultural and scientific exchanges between the two nations.

The United States should encourage the World Bank and IMF to work with the Cuban government to establish a path toward eventual membership. This may be the single best way to encourage sustained economic reform in Cuba. Washington should also support the efforts of Secretary-General Gaviria to involve the OAS in reviewing Cuba's hemispheric relations.

To promote pragmatic exchange between the U.S. and Cuban Governments:

The United States should make plain that economic and political reforms by Cuba—such as releasing political prisoners, accepting UN human rights monitors, allowing political dissent, and legalizing the formation of small businesses—would be met by parallel changes in U.S. policy toward Cuba. Both the U.S. and Cuban governments should undertake a controlled process of specific initiatives, conditioned understandings, and convergent steps, all limited in scope, but which together could cumulatively open the way for more substantial changes.

The United States should indicate its readiness to negotiate agreements with Cuba on issues in which both countries have coinciding interests. The United States and Cuba, for example, have both gained by recent agreements on immigration, and negotiations in this area should continue. Cuba and the United States would also benefit from cooperation to interdict drug traffickers, reciprocally inspect nuclear power plants, forecast weather-related disasters, and protect the environment.

The U.S. Embargo

We urge defeat of the Cuban Liberty and Democratic Solidarity Act—better known as the Helms-Burton legislation. It would injure and alienate ordinary Cubans, weaken Cuba's civil society, and retard Cuba's democratization. It would also reduce prospects for U.S. cooperation with other countries on Cuba. We continue, however, to oppose fully dismantling the trade embargo. The embargo can serve as a practical element of policy, if it is used as a bargaining chip in negotiations with Cuba of the kind we have recommended. A permanent situation of crisis around Cuba is unacceptable. Provoking an even more severe crisis is not a solution. The U.S. government should be prepared, step by step, to lift its trade embargo in response to specific initiatives taken by the Cuban government. What is needed from the United States is active bargaining, not passive waiting or the tightening of pressure without regard to the consequences.

Mr. DODD. I also think it behooves us to listen to the people who have stayed in Cuba for the last 30 years, who also want to see Castro go; who

have experienced firsthand the impact of our policies. Speaking for this group, the Cuban Conference of Catholic Bishops has said that the passage of this legislation to tighten the embargo would contribute to "an increase in the suffering of the people and risk of violence in the face of desperation." Again, these are not supporters of Fidel Castro. These are the people who have been in the frontlines in Cuba, fighting for change.

Mr. President, former National Security Adviser to President Carter, Zbigniew Brzezinski, had a very thoughtful article printed in the Houston Chronicle at the time of the refugee crisis last fall—again, someone whom I think all of us would agree was not soft on Castro, as some people like to use those words with anyone who disagrees with them. The title of this article is "Soft Landing or a Crash Dive in Store for Cuba?" Mr. Brzezinski laid out the alternative courses, and there are some, that we could follow in relations to Cuba to achieve the desired results. He concluded that it was in our interests for there to be a peaceful transition to a non-Communist regime in that country, rather than promote a social explosion and the concomitant tidal wave of Cuban humanity toward our shores.

Mr. President, I ask unanimous consent the article by Mr. Brzezinski be printed in the RECORD at this point, as well.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Houston Chronicle, Sept. 8, 1994]

SOFT LANDING OR A CRASH DIVE IN STORE FOR CUBA?

(By Zbigniew Brzezinski)

The Cuban regime is in its terminal stage. The critical issue at stake is whether its final gasp will be violent or relatively benign. American policy must make the strategic choice as to whether a "crash landing" scenario is preferable to a "soft landing."

As things are now headed, a bloody crash landing for the Castro regime is becoming more likely. U.S. sanctions are intensifying social and political tensions on the island. An explosion could occur before too much time has passed.

What then?

If an anti-Castro revolution succeeds quickly, the outcome may be viewed as beneficial to the United States as well as to the Cuban people themselves. The 35-year-old communist experiment in the Western Hemisphere will have gone up in the smoke of the final funeral pyre for the failed Marxist Utopia. It would be a fitting "Gottterdammerung" for a regime that was dedicated to violence and which ruled by violence.

But the explosion may not succeed. Castro is not only the Stalin of the Cuban revolution; he is also its Lenin. He does have considerable residual loyalty, not only among the ruling party-army elite, but within some sections of society.

It is also quite conceivable that Castro, faced with the realization that U.S. sanctions are stimulating an uprising, may use the current migration first to weaken the opposition and then, quite deliberately, to provoke an explosion which he can then more easily crush.

What then? Will the Clinton administration, which has made so much of the idea of "restoring" democracy to Haiti, sit back and do nothing while Cuban freedom fighters are crushed? Or will the United States launch an invasion of Cuba to finish the job?

The current policy of imposing intensifying social hardships on Cuba while condemning its regime—thereby also causing a greater outflow of migrants—only makes sense if the U.S. goal is to precipitate the early fall of the Castro regime. In that case, the United States must be ready to follow through on the strategic logic involved, while, indeed, rebuffing any Cuban proposals of wider negotiations.

In effect, the strategy of precipitating a "crash landing" also requires, as a last resort, clear-minded U.S. determination to invade Cuba.

Since there is reason to doubt that the Clinton administration is deliberately embarked on that course, and even more that it would be willing to launch a supportive invasion of Cuba, the U.S. rebuff to Cuba's overture for wider negotiations on the "true causes" for the flood of migrants makes little sense. A wiser and more effective response would be to seize the opportunity of the Cuban offer so that the United States can pursue a soft-landing strategy.

The Cubans have indicated that they would be prepared to contain the migratory outflow upon a positive American response to their proposal—and that would defuse the urgent problem posed by the migration itself.

But the U.S.-Cuban talks should not be limited to the issue of migration alone. Instead, they should be exploited to advance the soft-landing strategy by setting in motion a more deliberate, somewhat longer-term process designed to manage in a more benign way the terminal phase of the Castro regime.

Accordingly, in the dialogue with Havana, the United States should not be shy in offering its own diagnosis of the "true causes" of that regime's failures. Its brutal political dictatorship and its dogmatic economic management could be subjected to a scathing critique.

At the same time, attractive political and economic alternatives could also be put on the table. More specifically, the United States could propose a schedule for the staged introduction of democracy—perhaps on the model of what happened in Poland in 1989—as well as a similarly staged economic aid program (including a step-by-step lifting of the embargo), designed to alleviate the immediate suffering of the population and then to stimulate the economic recovery of the island.

Such an initiative would gain the support of much of Latin American public opinion. It would also be likely to have European backing, especially from Spain. These reactions would be noted in Cuba, making a negative response by Castro more costly for him.

Of course, given the dictatorial nature of the Cuban regime, it would be up to Castro personally to decide whether to accept or reject the initiative. Acceptance could make the process of transition more peaceful and also increasingly difficult to resist.

A refusal by Castro—which at this stage represents the more likely reaction—might help to mobilize support for the U.S. initiative even on the part of some Cubans who otherwise would support Castro in a final showdown. That would further weaken and isolate the old dictator, enhancing the prospects of success for any eventual popular revolt against his regime.

There is little to be risked by exploring the soft-landing option. And much to be gained, especially by the Cuban people.

Mr. DODD. At any rate, I apologize to my colleagues for taking this

amount of time, but my point here is I understand and appreciate the emotional levels that people feel when this issue comes up.

And I have great sympathy—not as a Cuban-American—but sympathy for how Cuban-Americans feel who had to leave their country under the worst of circumstances, or watch their families be imprisoned and treated brutally by their Government. But I think as we are examining how we deal with that problem, how we try to create the transition, that we do so with an eye toward what is in the best interest of our country, and also take steps that are not rooted and grounded in an emotional response but that are likely to produce the result which we can all support.

I strongly suggest to my colleagues that the legislation, no matter how well intended, does none of those things. In fact, I think it is bad for our country. I do not think it produces the kind of results at all that the proponents claim it will. In fact, I think it does quite the contrary. I do not think it is in the interest of this country. It does damage to our country, and I think it would make it that much more difficult to achieve the kind of results we would like to see in Cuba, and to see promptly.

For those reasons, Mr. President, I strongly urge that my colleagues vote against invoking cloture when that vote comes up—and that will be the first vote we will have on this measure—to send a message that this bill ought to go back to committee and be reexamined thoroughly as to whether this legislation really makes sense. If that does not occur, then vote against this legislation when that opportunity arises.

Mr. President, I yield the floor.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. MACK. Mr. President, I rise today in support of the Cuban Liberty and Democratic Solidarity Act and encourage my colleagues to vote for cloture when that time arrives.

This is a bill which would seek increased international pressure on Fidel Castro, hold out the promise of assistance to transition and democratic governments in Cuba, and provide a powerful disincentive to those who would use illegally expropriated property belonging to United States citizens to prop up the Castro regime and its instruments of repression.

Despite the diligent efforts of the Clinton administration and apologists for Castro to misrepresent this bill, this bill is an effective, and thoughtful program for maintaining economic pressure on Castro, supporting democratic forces inside Cuba, and planning for future transition and democratic governments.

Fidel Castro has been in power for 36 years. That is longer than Mao and Joseph Stalin. That is mindboggling.

As happened with the Soviet Union and the People's Republic of China,

much of the world has denied, ignored, and become inured to the litany of human rights abuses emanating from Cuba. Now, with the cold war over, there is even less interest.

Ramming tugs full of refugees, arbitrary arrests, made-up crimes and lengthy imprisonment in squalid prisons and psychiatric hospitals apparently do not raise an eyebrow anymore.

The final step in the process of accommodation, normalization of commercial and other ties, is taking place now as many countries look for commercial opportunities in Cuba.

Before I go on to explain why foreign investment in Cuba will prolong, not end, the tyranny of Fidel Castro, let me address the state of human rights in Cuba today.

I would like to read an excerpt from the 1994-95 Freedom in the World Report, compiled by Freedom House.

With the possible exception of South Africa, Indonesia and China, Cuba under Castro has had more political prisoners per capita for longer periods than any other country.

Since 1992 Cuba's community of human rights activists and dissidents has been subject to particularly severe crackdowns. Hundreds of human rights activists have been jailed or placed under house arrest.

In the extended crackdown that began in August 1994, over thirty dissidents were detained and beaten while in custody.

Dissidents are frequently assaulted in the streets and in their homes by plainclothes police and the 'rapid action brigades,' mobs organized by state security, often through the Committees for the Defense of the Revolution (CDRs).

There is continued evidence of torture and killings in prisons and psychiatric institutions, where a number of the dissidents arrested in recent years have been incarcerated.

Since 1990, the International Committee of the Red Cross has been denied access to prisoners.

Freedom of movement and freedom to choose one's residence, education or job are restricted. Attempting to leave the island without permission is a punishable offense and crackdowns have been severe since 1993, except during the month-long exodus in 1994. The punishment for illegal exit—

I would like just to make a point here. The idea that you would live in a country that would have a law that would make it illegal for you to leave, and the punishment for that would be 3 years in prison is unconscionable. At the present time, there are some 1,000 individuals, it is estimated, in prison for that particular crime of wanting to leave the country.

Mr. JEFFORDS. Mr. President, will the Senator yield for a unanimous consent request?

Mr. MACK. Certainly.

PRIVILEGE OF THE FLOOR

Mr. JEFFORDS. Mr. President, I ask unanimous consent that John F. Guerra, a Pearson fellow on my staff, be granted the privilege of the floor for the pendency of this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MACK. Unfortunately, the world has become so conditioned to Castro's

abuses that the suffering of the Cuban people sometimes becomes a footnote in debates over maintaining the embargo, or Castro's efforts to revive Cuba's nuclear and military capabilities.

Mr. President, I have had the opportunity over the years to have been somewhat involved in the issues of human rights violations in Cuba having had the opportunity to talk with Cubans who have one way or another left the island of Cuba. I have also been in Geneva during the debate surrounding the issue of human rights violations in Cuba.

While I can understand how, over a period of time, people seem to be able to just brush aside the human aspects of this debate and focus on the legal constitutional issues, the reality of what we are talking about here today is not economics and it is not constitutional law. It is what is happening to individuals on a day-to-day basis.

I would say to you again that in my conversations with people who have left Cuba and who have left recently, their reaction to our backing away or backing down on the economic sanctions, or the embargo that is in place, they say that would be the wrong thing to do even though they are going through tremendous suffering. They say it would be the wrong thing to do. It is the only message they hear from around the world that says that someone is concerned about their future. It would be a terrible mistake for the Senate to reject this legislation.

I would like to turn the debate briefly away from the human rights aspect of it and talk a little bit about the embargo and maintaining economic pressure on Castro.

Foreign investors in Cuba often purport to be responding to changes in the regime. In fact, there have been no significant economic changes, let alone political ones.

Castro controls sectors of the economy that attract most foreign investment such as mining and petroleum, telecommunications, agriculture, and tourism.

An index of foreign investment in Cuba lists over a dozen democracies.

Foreign companies must make partnerships with the regime. Increasingly this means Cuba's military, which like China's, is getting more and more involved in the economy.

Tourism is the military's cash cow, especially foreigners-only restaurants and resorts which have created what Cubans call tourism apartheid.

The argument that foreign investment makes private citizens independent of state control by enabling them to support a free press, political parties, religious groups and labor and professional organizations simply does not apply to Cuba where there is no such thing as a right to private property, let alone free speech, association or assembly.

European, Canadian, and Mexican investors have been providing crucial support to Castro for years yet there is

no benefit to ordinary Cubans. The constitution requires state ownership of the fundamental means of production. Foreign companies may not contract with workers.

Instead, companies pay the Government. Again, I want to stress this point. If you do business in Cuba today, the impression is created that these reforms are somehow or another dramatically changing what is happening in Cuba. If you are doing business in Cuba today and you hire a number of Cubans, you do not pay directly your work force.

You pay the money to the Cuban Government, say, 300 United States dollars a month for each employee. That employee receives \$4 to \$5 a month in pesos from the Cuban Government. The balance of that money stays with Fidel Castro's government. In fact, it enhances Fidel Castro's ability to control the island.

So this idea, this notion that somehow or other if we were to liberalize our approach in dealing with Fidel Castro that the people of Cuba will benefit is just hogwash. The individual who will benefit will be Fidel Castro. And anyone who has done any serious reading about Fidel Castro knows that his only motive is his own private power, his ability to remain in place as the leader. His interests are not, in fact, the Cuban people.

Decree Law No. 149 directs agents to search out and seize cash or property of Cubans deemed unduly wealthy. Deemed unduly wealthy, interesting concept, is it not, that the government would define and determine who in the country is unduly wealthy.

Individuals discovered with a motorbike or extra clothes can be charged with illegal enrichment and face lengthy prison terms. Sometimes foreign investments involve the \$1.8 billion in U.S. properties seized in 1960 without compensation. Despite misleading representations to prospective investors, Cuba has never settled a single claim for these properties.

Castro encourages and courts this investment, even inventing a cosmetic law that purports to protect the assets of foreign investors. Our State Department asks our allies to discourage their citizens from investing in such properties, with mixed success. Somehow transactions that businessmen would not touch with a 10-foot pole in their own countries seem all right in Cuba, where fraudulent transactions involving the government are above the law.

This bill provides a powerful disincentive to those who knowingly invest in expropriated U.S. properties by providing another forum for legal action by U.S. citizens. However, neither this bill nor longstanding United States policy towards Cuba is inspired by the economic injuries suffered by our citizens. We simply refuse to prop up the Castro regime and its instruments of repression.

A recent report of the AFL-CIO's American Institute for Free Labor De-

velopment explained Castro's strategy to substitute hard currency for real change.

And I quote:

"[r]eforms" are not seen as ends in themselves but as temporary mechanisms for gaining enough foreign currency and trade to ensure the survival of the communist system. "Privatization" is not an open-ended invitation to foreign entrepreneurs, but a tightly controlled partnership between investors and government agencies, for the purpose of strengthening those very agencies.

The Clinton administration's changeable Cuba policy may have led our allies to believe sentiment in the United States is divided over Cuba. It is not. Worse still, administration wavering may have caused Cubans to doubt United States resolve and take to rafts and innertubes in numbers greater than any time since the Mariel exodus.

Some of our allies have criticized the bill on the grounds that the United States has no right to tell its allies not to do business in Cuba. We are doing no such thing. This legislation is directed at Fidel Castro and his government. Insofar as this bill has a message for our allies, it is that we attach the greatest importance to ending the decades-long nightmare of the Cuban people. Foreign investment on Castro's terms prolongs that nightmare.

Other provisions of this bill would deny Cuba the money and legitimacy that comes from being a member of international financial and other institutions, like the Inter-American Development Bank and the Organization of American States.

This bill tells the States of the former Soviet Union they may not blithely restart their predecessor's close relations with Fidel Castro and expect the United States not to care.

We will not subsidize Russia's assistance to Cuba so long as it supports Castro's destabilizing ambitions in the hemisphere and keeps the Cuban people under the thumb of corrupt and inefficient Socialist economic policies.

We will however plan for the day, the moment, that the United States can help the people of Cuba make a transition to democracy. This bill holds out the promise of aid to transition and democratic governments in Cuba and allows the President great flexibility in extending the help and support of the United States.

Americans right now are already the largest donors of humanitarian aid to Cuba. We will do more. But we won't prolong the Castro nightmare 1 minute longer than necessary by relaxing pressure on Castro or helping him attract foreign investment.

Mr. President, not too long ago I saw a movie called "Braveheart." It is about the struggle for human freedom. And this movie was about the effort on the part of the Scottish people to secure their freedom. There was a scene in this movie in the midst of a battle in

which the hero of the movie had spoken with the nobles in the country asking for their support. And at the crucial moment in the battle, I remember again the hero turning to someone for support from these nobles, and at this crucial moment, the nobles turned their backs on freedom. They turned their backs on freedom for one reason: for their self-interest, for their need to continue the existing system because they profited from it.

I know that the motivation, frankly, behind those who are in disagreement with what we are trying to accomplish is the desire to profit from the markets that will be available someday in Cuba. I understand that. I am disappointed that people react that way. We will never change that attitude. It has been in existence as long as man has been on the surface of this Earth.

But I think we ought to recognize it for what it is. People want to do business in China today for exactly the same reason. For a few brief moments the Nation focused on Harry Wu. But now he is back, and everyone has forgotten. The same kind of thing is happening in Cuba. Day in and day out innocent people who want the same things out of life that you and I enjoy, and those are the basic principles and the freedoms that we enjoy—the freedom of assembly, the freedom of religion, the freedom to pursue your own livelihood—and yet we are, in essence, not willing to stand up and fight for those individuals because of the commercial interest that exists throughout the world. I understand it. I reject it. I wish it was not there. But I think we ought to recognize it because that is what is driving a lot of this debate.

I would hope that just occasionally there would be an opportunity for the nobles of the world to say just once in this one case, "I am willing to give up the opportunity for profit, the opportunity for growth in my company, give up those opportunities so that other individuals that we do not know, never will meet, but who have struggled for the same kinds of freedom and liberty that we enjoy today." And I certainly would hope that this Congress will pass this legislation so that we can provide a message of hope to the people of Cuba.

I yield the floor.

Mr. REID. Mr. President, I rise in support of the Cuban Liberty and Democratic Solidarity Act of 1995. I believe this legislation will encourage the holding of free and fair democratic elections in Cuba. It will provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba. This bill will also protect the rights of U.S. persons who own claims to confiscated property abroad.

I believe this legislation will expedite the transition to a democratic government in Cuba. Whether you are for or against this bill, no one disagrees that

this should be the policy of our government. Denying United States visas to those who trade with Cuba and discouraging International Financial Institutions assistance to Cuba are necessary steps that will strengthen the embargo and bring about the downfall of the Castro regime.

One of the significant provisions of this bill is the section dealing with property. It is difficult to accept the argument that Fidel Castro's confiscation of property belonging to naturalized citizens should not be subject to a remedy under the domestic laws of the United States. Confiscations of property belonging to U.S. nationals at the time of the taking clearly violated international law. These takings were done to retaliate against U.S. nationals for acts of the U.S. Government, and the takings were without the payment of adequate and effective compensation.

While courts have generally not recognized actions of foreign governments against its own citizens, international human rights law does recognize that in certain circumstances a state violates international law when it confiscates the property of either its own citizens or aliens based on some invidious category such as race, nationality, or political opinion. Some legal scholars have noted that the international community may be moving toward recognition of claims when confiscations or expropriations are the result of such discrimination.

The stories of property confiscation in Cuba are repugnant. The confiscations of Cuban-owned property were based on such obscene grounds as an owner's having committed "offenses defined by law as counter-revolutionary."

I believe this legislation establishes the framework by which Cuba will become a democratic nation. I have heard from many in the Cuban-American community who spend the majority of their time working to realize this objective. This legislation honors the hard work of these fighters of freedom and I encourage my colleagues to support final passage. I thank the Chair and yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER (Mr. JEFFORDS). The Senator from California is recognized.

TRIBUTE TO SAM NUNN

Mrs. FEINSTEIN. Mr. President, I rise not to speak on this bill but to do two things. First, to say a few words and share my respect and admiration for the senior Senator from Georgia. And, second to share some of my reflections of the past year and where I think we seem to be heading with the reconciliation bill.

Mr. President, I do not serve on a committee with the senior Senator from Georgia, but I do try to listen to the floor when I am in the office. I have a very simple test, I either turn the sound up or down or off depending on

the merit I find in the discussion. I have always turned the sound up to listen to Senator Sam NUNN. And, what I have heard is an intelligent, a reasoned, and a very informed person who has brought a great deal to bear in the debates on the Senate floor. He has been a strong and tireless advocate for a national defense policy that is well thought out, for foreign policy that explores each issue as part of a whole policy situation and not a separate stand-alone issue.

His ability, I think, to see individual defense programs or foreign policy actions as part of the total debate has given him the ability to think independently of party and the daily public opinion poll and put forth a policy that is really important.

I will miss him greatly. I very much regret his decision to retire from the U.S. Senate. I think it is to the Senate's loss when we lose one of our great minds.

The distinguished Senator has been an advocate for a strong national defense, especially pushing for a well-trained and modern force. He has constantly lent his support to support programs which would better prepare our men and women in uniform for war, but moreover for operations-other-than-war including humanitarian missions.

His leadership in foreign policy is marked, as well. He has been the single strongest voice for lessening the threat of nuclear proliferation from the States of the former Soviet Union with the policies advanced under the Nunn-Lugar program. And, he has helped our relationship with the new Russia and the nations of Eastern Europe through his ideas on NATO expansion and the Partnership for Peace Program.

Senator NUNN will continue to remain a voice of moderation and independent thought throughout the remainder of his term. I will miss his contributions to some of the most important issues of our day and this body will miss his leadership.

THE RECONCILIATION BILL

Mrs. FEINSTEIN. Mr. President, over the past 200 years, almost 2,000 men and women have stood in this Chamber charged with the task of governing the greatest democracy in the world. They were, like us, men and women of ideals and principle. This Chamber is also no stranger to revolutionary winds and radical ideas.

Some ideas dissipate quickly; others stand like pillars in our Nation's history. One thing has held true over time, most ideals will not withstand the rigors of the democratic process if they do not hold true to the democratic promise: The promise of opportunity for those willing to earn it, the promise of freedom for those willing to protect it, and the promise of security for those who play by the rules and give their fair share.